

**AMENDMENT NO. 3**  
**LAND LEASE**  
**BETWEEN**  
**SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY (SDSTA)**  
**AND**  
**THE UNITED STATES OF AMERICA**

THIS AMENDMENT TO LAND LEASE AGREEMENT (“AMENDMENT”) is entered into as of November \_\_\_, 2020 (the “Amendment Effective Date”) for the modification of the Lease by and between the South Dakota Science and Technology Authority, whose address is 630 E. Summit Street, Lead, SD 57754 and whose interest in the property hereinafter described is that of owner for itself, its successors, and assigns, hereinafter called “Lessor”, and the UNITED STATES OF AMERICA, hereinafter called “the Government” or “Lessee”, acting by and through the Department of Energy (“DOE”), under authority and by virtue of the Atomic Energy Act of 1954, Public Law 83-703, and the Department of Energy Organization Act, Public Law 95-91, as amended, with reference to the following facts:

- A. Lessor and Lessee are parties to that certain Lease dated the 29<sup>th</sup> day of March 2016, (the “Lease”) pursuant to which the DOE leases from Lessor the Premises described in that certain Land Lease.
- B. Lessor and Lessee are parties to that certain Lease Amendment dated the 18<sup>th</sup> day of July 2017, (the “Amendment No. 1”) pursuant to which the DOE leased from Lessor an additional 1,248 gross square feet in the Building Ross Dry Facility on the main floor and 425 gross square feet in the basement area.
- C. Lessor and Lessee are parties to that certain Lease Amendment dated the 8<sup>th</sup> day of May 2018, (the “Amendment No. 2”) pursuant to which the DOE leased from Lessor an additional 480 gross square feet in the Building Ross Dry Facility on the main floor and 100 gross square feet of adjacent exterior area for outdoor HVAC unit.
- D. Lessee desires to lease an additional 9,360 gross square feet and identified as the “Machine Shop” located near the Governor’s Corner at the 4850 Level of the Ross Campus, which is further identified in Exhibit A, attached hereto and made a part hereof.
- E. Lessor has no present need for the additional space and supports the Lessee’s desire for additional space in support of the Long Baseline Neutrino Facility.

**NOW, THEREFORE**, in consideration of the above recitals which by this reference are incorporated herein, the mutual covenants and conditions contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and DOE agree as follows:

1. Paragraph A - Premises of the Lease is hereby amended to add additional space located at the 4850 Level of the Ross Complex of the Homestake Mine in Lead, SD as described below:
  - a) An area measuring 80' x 94' x 92' x 140' consisting of approximately 9,360 gross square feet which is further identified as the "Machine Shop" in Exhibit A, attached hereto and made a part hereof.
2. Except as expressly amended, modified or changed herein, all of the terms, conditions and covenants of the Lease shall remain in full force and effect, and Lessor and Lessee hereby ratify and reaffirm such terms, conditions and covenants and shall be bound thereby.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 3 to Lease as of the date first written above.

SOUTH DAKOTA SCIENCE AND  
TECHNOLOGY AUTHORITY

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY

By: \_\_\_\_\_  
Title: Casey C. Peterson  
Board Chairperson

By: \_\_\_\_\_  
Title: Marla J. Larsen-Williams  
Real Estate Contracting Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CORPORATE CERTIFICATE

I, Casey C. Peterson, certify that I am the Chairman of the Board of the South Dakota Science and Technology Authority, a body corporate and politic, named as Lessor in the attached Amendment No. 3 to Land Lease; that I duly signed said lease on behalf of the Lessor, by authority of its governing body, and is within the scope of its powers.

In certification thereof, I have hereunto affixed my hand this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Casey C. Peterson, Board Chairman  
South Dakota Science and Technology Authority

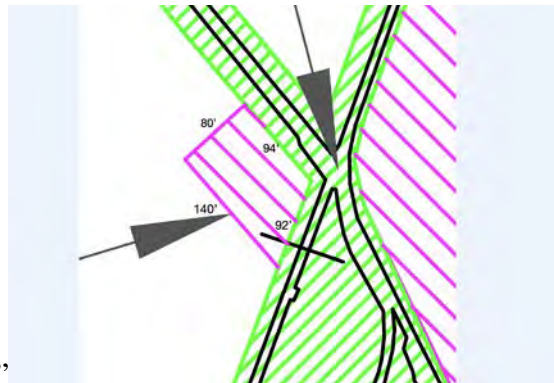
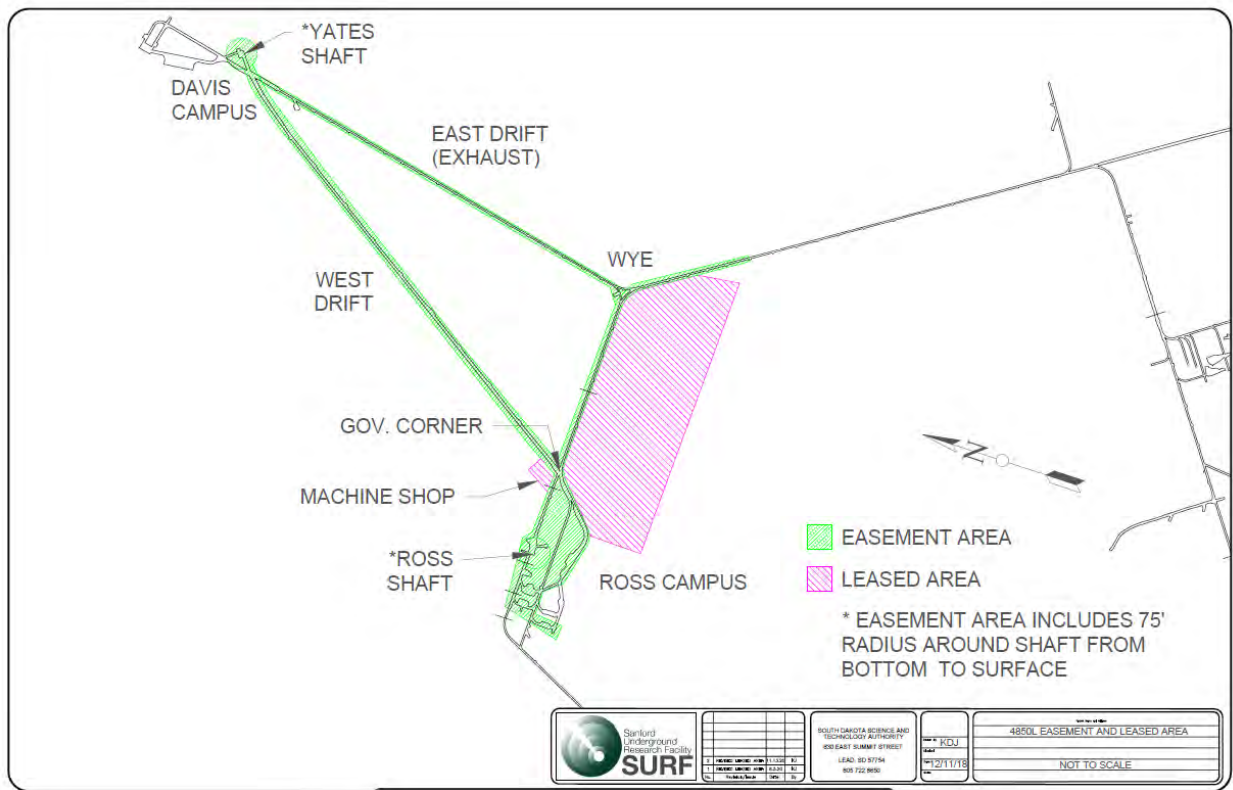
None  
(SEAL)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public in and for the State of South Dakota

My commission expires: \_\_\_\_\_

AMENDMENT NO. 3 - EXHIBIT A



Dimensions of "Machine Shop"



**FACILITY AND LAND USE AGREEMENT  
HOMESTAKE MINING COMPANY PROPERTY**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between the South Dakota Science and Technology Authority, 630 E. Summit Street, Lead, SD, 57754 ("SDSTA") and Thyssen Mining Inc. ("TMI").

**RECITALS**

A. It is anticipated that TMI, pursuant to the terms of a subcontract ("TMI Contract") assigned to Fermi Research Alliance, LLC ("FRA") by Kiewit - Alberici, a Joint Venture pursuant to the Fermilab Subcontract for Long Baseline Neutrino Facility ("LBNF") Far Site facilities, executed by on July 27, 2017 (the "Fermilab Subcontract"), will be tasked with operating and maintaining a temporary rock conveyor system ("TRCS") across and through (including both underground and above ground) property owned by Homestake Mining Company of California ("Homestake") and others. The TRCS will be used to move rock excavated from the 4850' level across property owned by SDSTA, Homestake and others into the "Open Cut" site owned by Homestake, all in connection with the construction of the LBNF Far Site Facilities.

B. The TRCS is a conveyor system with an appropriate safety enclosure for the portion of the conveyor that is above ground.

C. The route of the TRCS across and through Homestake-owned real estate is shown on Exhibit A, attached hereto and incorporated herein by this reference. Exhibit A also shows the location of access for operation, maintenance and removal of the TRCS across and through Homestake-owned real estate. The property subject to the rights granted hereunder and described on the attached Exhibit A is referred to hereinafter as the "Homestake TRCS Use Area."

D. Homestake has granted SDSTA an easement, including a right of access and the right to deposit excavated rock into the Open Cut, as described in the Termination of Easement and Replacement Easement Agreement attached hereto, marked as Exhibit B, and incorporated herein by this reference (the "Homestake Easement").

E. TMI will require access to, and temporary possession of, the Homestake TRCS Use Area for the purpose of maintenance, operation and removal of the TRCS.

F. The TRCS will deposit excavated rock into the Open Cut. The rights of use and access described herein include the right to deposit excavated rock into the Open Cut as described herein.

G. SDSTA desires to make a grant to TMI and its subcontractors and necessary licensees and invitees (including but not limited to Fermi Research Alliance, LLC, and the United States of America, acting through the Department of Energy) of the rights granted to SDSTA under the Homestake Easement, and TMI desires to accept said grant of access, right of temporary possession, and right to deposit excavated rock into the Open Cut, all according and subject to the terms and conditions set forth herein.

**AGREEMENT**

For and in consideration of the foregoing Recitals and the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties AGREE as follows:

1. SDSTA hereby grants TMI and its subcontractors and reasonably necessary licensees and invitees (including but not limited to FRA and the United States of America, acting through the Department of Energy) a temporary, limited, and revocable right of use and access to enter upon the Homestake TRCS Use Area for the sole and limited purpose of maintaining, operating and removing the TRCS as described on the attached Exhibit C (the "Work"). Pursuant to the Lease entered into between SDSTA and the U.S. Department of Energy on or about March 29, 2016, ownership of and responsibility for excavated rock deposited into the Open Cut remains with SDSTA, and TMI is not liable for any environmental concerns, safety hazards, or aesthetic concerns arising from the physical composition of the deposited excavated rock. TMI shall deposit excavated rock in accordance with the Letter of Direction issued by SDSTA dated April 3, 2020. Nothing herein shall act to limit TMI'S responsibility to transport and deposit the excavated rock in a safe and prudent manner, or to limit TMI's liability for the failure so to do.

2. The foregoing grant is subject to the following terms and conditions:

(a). Any changes to Exhibit A must be approved in writing by SDSTA's Representative prior to commencing any part of the Work or implementation of any change after the commencement of the Work. Any material changes to Exhibit C must be provided to SDSTA's Representative at least twenty (20) days prior to implementation;

(b). At least ten (10) business days prior to commencement of the Work, TMI must provide SDSTA's Representative with proof, reasonably acceptable to SDSTA, of the existence of the insurance coverages required under section A, paragraph 5 of the Fermilab Subcontract;

(c). Any health or safety hazards resulting from the Work while performed by TMI (including but not limited to trip and fall hazards) must be appropriately mitigated at the end of each day during which the Work is conducted, and may not be left unattended if not mitigated. In the event that TMI discovers health or safety hazards not created by the Work, TMI shall notify SDSTA of the hazard;

(d). Without limiting the generality of any of the foregoing, TMI must comply with SDSTA's environment, safety, and health (ESH) requirements;

(e). Any Homestake or SDSTA employee or representative may require TMI to stop the Work in the event of an actual or perceived health or safety hazard until such time as the hazard is mitigated to the satisfaction of SDSTA's Representative;

(f). The Homestake TRCS Use Area must be appropriately secured, all construction rubble and waste must be removed therefrom, and it must otherwise be maintained in a manner consistent with the surrounding real estate owned by Homestake and so as not create an eyesore.

(g). Neither TMI nor any of its contractors, subcontractors, agents, licensees and invitees may authorize or allow any mechanics, materialmen, vendors, or other lien of any kind or nature whatsoever to attach to the real estate subject to this Agreement, nor to any part thereof or interest therein. If any such lien shall attach to said real estate, TMI shall, at its own expense, promptly take all steps necessary to obtain the discharge and release of any such lien. TMI shall indemnify and hold Homestake and SDSTA harmless from and against any such liens;

(h). TMI shall not violate the covenants, terms, and conditions of the Homestake Easement, including without limitation sections 4, 5, and 6 thereof; provided, however that TMI shall have no obligation to provide the specific insurance required under subsections 7.B(2), 7.B(3), or 7.B(7) of the Homestake Easement; and further provided, however, that TMI shall not have any obligation arising under the terms of the Homestake Easement to indemnify Homestake. The foregoing and anything elsewhere in this Agreement to the contrary notwithstanding, TMI acknowledges and agrees that the Work to be conducted on and around the Homestake TRCS Use Area is a part of the scope of work described in Attachment A to the TMI Contract. TMI further acknowledges and agrees that the obligation to provide certain insurance coverages to Homestake, SDSTA and others (including commercial general liability coverage and pollution liability coverage) and the obligation to indemnify Homestake, SDSTA and others, as set out on pages 15-20 and 68-70 in the Fermilab Subcontract, also apply to the Work to be performed under this Agreement. Upon request by SDSTA, TMI shall provide copies of any insurance policy (including applicable endorsements) required by the terms of this Agreement to SDSTA;

(i). Without limiting the generality of the reference to sections 4, 5, and 6 of the Homestake Easement stated above in subsection 2(g), TMI acknowledges and agrees it is solely responsible for obtaining any and all necessary permits as provided in subsection 5.A of the Homestake Easement; for procuring, conducting, and paying for any further engineering, geologic, reclamation, and other studies (provided FRA executes a change order to the TMI Contract for costs and/or schedule impacts of such studies) as described in subsections 5.B and 5.C of the Homestake Easement; and for obtaining such further approvals from Homestake as may be required under any provision of the Homestake Easement; SDSTA will cooperate with TMI in obtaining such permits and Homestake approval. TMI acknowledges and agrees it will not commence or continue with the Work unless and until all initial and any subsequent engineering, geologic, reclamation, and other studies required by the Homestake Easement have been completed and approved by Homestake as may be required by the Homestake Easement. Nothing herein shall require SDSTA to provide or pay for any such studies; and

(j). TMI and its contractors, subcontractors, agents, licensees and invitees shall comply with SDSTA's Risk Transfer Protocols, a copy of which has been provided to TMI.

3. TMI will re-convey to SDSTA all rights related to the Homestake Easement granted hereunder within one hundred eighty (180) days of final completion of the TMI Contract for LBNF or, if FRA directs TMI to remove the TRCS and executes a change order to the TMI Contract for the removal, upon final completion of the removal, whichever is later. TMI is not expected or required to commence removal work until the change order is executed by FRA. If FRA does not direct TMI to remove the TRCS, then TRCS removal will be addressed under the terms of existing and future

agreements between and among FRA, SDSTA, and Homestake concerning its removal. In addition, TMI will re-convey to SDSTA all rights to the Homestake Easement granted hereunder for cause upon ninety days (90) written demand from SDSTA, provided the cause giving rise to the demand remains uncured at the end of said ninety (90) day period. As used in this Agreement, the term "cause" includes, but is not limited to, any material violation by TMI of the covenants, terms, and conditions of this Agreement or of the Homestake Easement. In the event FRA terminates the TMI Contract, this Agreement shall terminate. The provisions of sections 2(g), 2(h), 6, 8, 9, and 10 of this Agreement shall survive re-conveyance to SDSTA of TMI's rights hereunder and shall also survive termination of this Agreement for any reason.

4. Nothing herein is intended to modify or waive any insurance, indemnification, or other requirements in any existing contracts that act in favor of SDSTA or Homestake.

5. For the purposes of this Agreement, SDSTA's Representative is Tim Baumgartner, (605) 390-5035, [tbaumgartner@sanfordlab.org](mailto:tbaumgartner@sanfordlab.org).

6. The parties acknowledge and agree that there are no covenants between them regarding the fitness or suitability of the Property (as that term is defined and used in the Homestake Easement) for the purposes of the Replacement Easement or Permitted Uses (as those terms are defined and used in the Homestake Easement). The parties further acknowledge that the route for the TRCS has already been chosen, the TRCS is already installed, and that TMI had no role in the route selection or the installation of the TRCS. WITHOUT LIMITING THE FOREGOING, SDSTA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES CONCERNING THE SUITABILITY OF THE PROPERTY (AS DEFINED AND USED IN THE HOMESTAKE EASEMENT) FOR ANY OF TMI'S INTENDED USES OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION AND TMI'S USE OF THE PROPERTY FOR PERMITTED USES (AS THOSE TERMS ARE DEFINED AND USED IN THE HOMESTAKE EASEMENT) UNDER THE HOMESTAKE EASEMENT SHALL BE "AS IS, WHERE IS" WITH ALL FAULTS. Nothing in this section 6 shall act to amend, modify, or waive any express or implied representations or warranties made by Fermi Research Alliance, LLC, under or in connection with the Subcontract.

7. Except as otherwise provided above in section 1 concerning subcontractors and reasonably necessary licensees and invitees (including but not limited to Fermi Research Alliance, LLC, and the United States of America, acting through the Department of Energy), TMI's rights and obligations hereunder may not be assigned, nor may any rights hereunder be granted to any other party, absent SDSTA's prior written consent. TMI acknowledges that any such consent may, among other things, be conditioned upon approval from Homestake. From time to time as SDSTA may reasonably require, TMI shall provide to SDSTA a list of all subcontractors, licensees, and invitees who have been or are projected to be granted access to the Homestake TRCS Use Area and if requested, a description of the reason for the grant of access.

8. Nothing herein is intended to obligate SDSTA to undertake or pay for any of the Work or for SDSTA to undertake or pay the cost of compliance by TMI with the terms and conditions of the Homestake Easement or this Agreement.

9. Nothing herein shall act to discharge, release, or modify SDSTA's obligations under the Homestake Easement, including, without limitation, to indemnify or provide proof of insurance to

Homestake or any of the Homestake Indemnified Parties as provided in section 6 of the Homestake Easement.

10. The terms of this Agreement shall be construed under and governed by the laws of the State of South Dakota, without respect to the conflicts of law principles thereof. The parties were both represented by legal counsel in connection with the drafting of this Agreement and have engaged in negotiations concerning the terms and provisions hereof. Accordingly, the parties do not intend that the rule relating to the interpretation of contracts against the drafter be applied to this Agreement or any provision hereof or to any other agreement or instrument executed in connection herewith, and hereby waive the application of any such rule. This Agreement may only be amended by a written document, executed with the same formalities as this Agreement. Any lawsuit arising out of or related to this Agreement must be brought in a court of the Unified Judicial System of the State of South Dakota.

SOUTH DAKOTA SCIENCE AND  
TECHNOLOGY AUTHORITY

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

THYSSEN MINING INC.



BY: Ryan J. McHale

ITS: Chief Operating Officer

DATE: Nov 17, 2020

CONSENT TO GRANT

Homestake Mining Company of California, 11457 Bobtail Gulch Street, Central City, South Dakota, 57754, hereby consents to the foregoing grant of use and access upon the terms set forth therein.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

State of \_\_\_\_\_        )  
County of \_\_\_\_\_    ) ss

On this the \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the Director for HOMESTAKE MINING COMPANY OF CALIFORNIA, and on oath stated that he was authorized to sign the foregoing instrument on behalf of the corporation for the purposes therein contained.

IN WITNESS WHERE OF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_

State of South Dakota            )  
  )ss  
County of Pennington        )

On this the \_\_\_\_ day of \_\_\_\_\_, 2020, before me the undersigned officer,  
personally appeared Casey Peterson, who acknowledged himself/herself to be the  
Chairperson of South Dakota Science and Technology Authority, a public entity, and that he/s he  
as such Chairperson, being authorized so to do, executed the foregoing name of the public  
entity by himself/herself as Chairperson

IN WITNESS WHEREOF I hereunto set my hand and official seal this \_\_\_\_ day of  
\_\_\_\_\_, 2020.

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Notary Print Name:  
My Commission Expires:

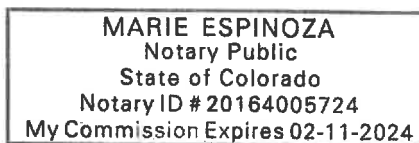
State of Colorado  
County of Denver ) ss

On this the 17th day of November, 2020, before me the undersigned officer,  
personally appeared Ryan J. McHale, who acknowledged himself/herself to be the  
Chief Operating Officer (COO) of TMI, and that he/she as such COO, being authorized so  
to do, executed the foregoing name of TMI by himself/herself as  
COO

IN WITNESS WHEREOF I hereunto set my hand and official seal this 17th  
of November, 2020. Marie Espinoza  
Notary Public

(SEAL)

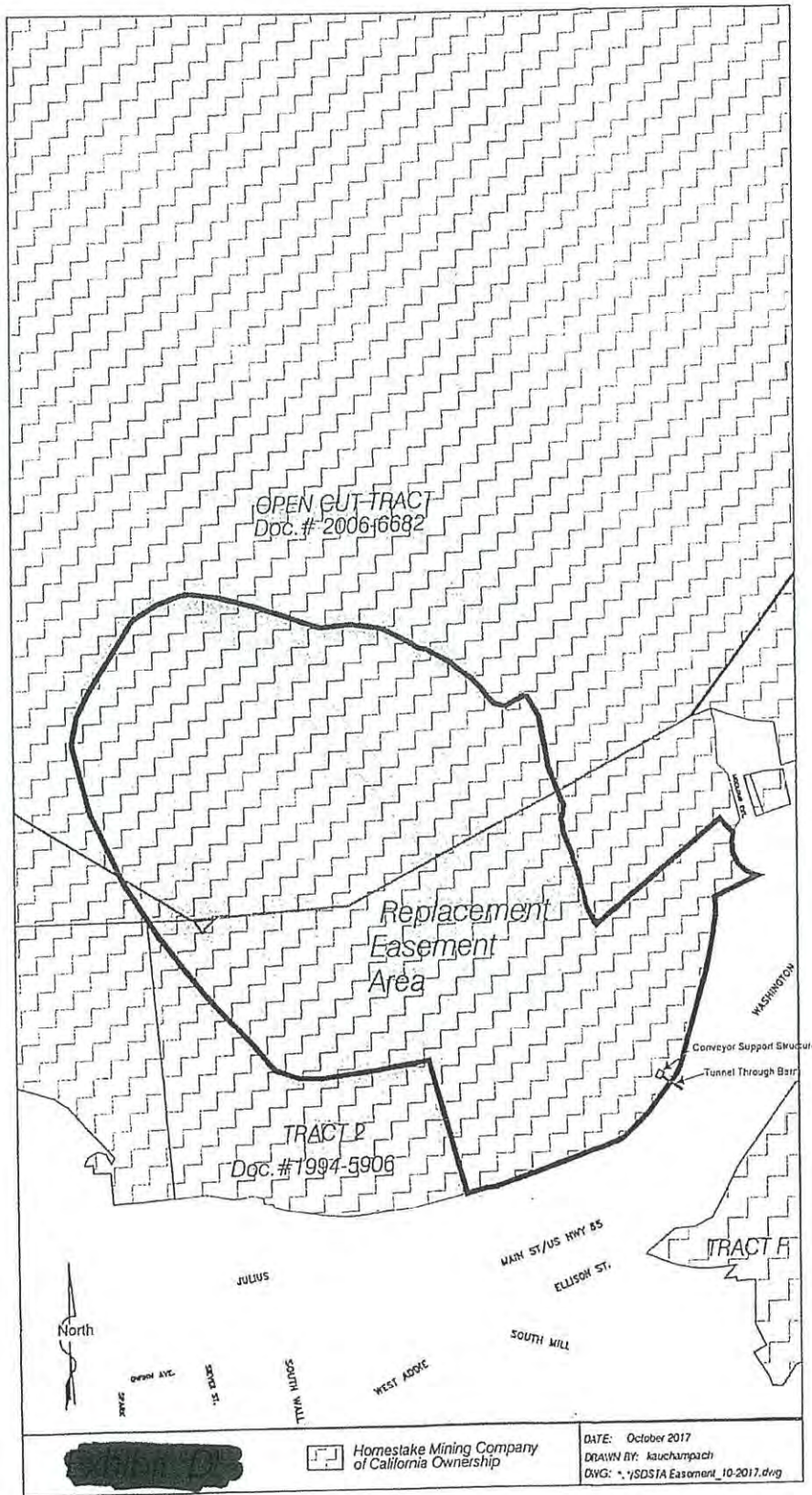
Notary Print Name: Marie Espinoza  
My Commission Expires: 02-11-24





**Exhibit A**

to Facility and Land Use Agreement  
Homestake Mining Company Property



**Exhibit  
B**

to Facility and Land Use Agreement  
Homestake Mining Company Property

(Homestake Easement)

Prepared by:  
Timothy M. Engel  
May, Adam, Gerdes & Thompson LLP  
PO Box 160  
503 S. Pierre Street  
Pierre, SD 57501  
Telephone 605.224-8803



Doc #: 2019-02081  
Date: 05/29/2019 11:45:00  
Sheree L. Green  
Register of Deeds  
Lawrence Co. - Fee \$30.00

**AGREEMENT FOR TERMINATION OF EASEMENTS**  
**AND**  
**GRANT OF REPLACEMENT EASEMENT**

**THIS AGREEMENT FOR TERMINATION OF EASEMENTS AND GRANT OF REPLACEMENT EASEMENT** (the "Agreement") is entered into effective the 6th day of December, 2018, by and between **HOMESTAKE MINING COMPANY OF CALIFORNIA** ("Homestake"), of 11457 Bobtail Gulch Street, Central City, South Dakota 57754, and **SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY** ("SDSTA"), a body corporate and body politic of the State of South Dakota, of 630 East Summit Street, Lead, South Dakota 57754. Homestake and the SDSTA sometimes are referred to in this Agreement individually as a "Party" and collectively as the "Parties."

**RECITALS**

**A.** Homestake previously granted easements to SDSTA in an Easement Agreement dated effective October 5, 2015 (the "Easement Agreement") and recorded in the Office of the Lawrence County, South Dakota Register of Deeds as Doc. # 2015-04399 (the "Prior Easements"). The Prior Easements and the lands affected thereby are described in Exhibit "A" attached hereto.

**B.** The Easement Agreement was amended by an Amendment No. 1 to Easement Agreement dated effective June 1, 2016 (the "Amendment") and recorded in the Office of the Lawrence County, South Dakota Register of Deeds as Doc. # 2016-03292, and re-recorded as Doc. # 2016-03422. The lands covered by the Amendment are described on Exhibit "B" attached hereto.

Doc #: 2019-02081  
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C. The Parties desire to partially terminate and modify the Prior Easements, the Easement Agreement, and the Amendment, with Homestake granting a replacement easement (the "Replacement Easement") to SDSTA.

D. This Replacement Easement eliminates the Access and Conveyor Easements, and also eliminates the option of hauling rock on the Terraville Road to dump into the Open Cut. The Primary Easement, which is the area shown on Exhibits A and B labeled "Primary Easement", continues in effect except as modified and replaced as described and shown in Exhibits "C" and "D."

E. All capitalized terms herein shall have the same meaning as in the Easement Agreement and in the Amendment, or as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, Homestake and SDSTA agree as follows:

1. Definitions. As used in this Agreement the following capitalized terms shall have the meanings as set forth below.

A. "**Applicable Laws**" means any local, state, provincial, territorial, national or federal laws, legislation, statutes, regulations, rules, treaties and orders or requirements of a court or any governmental authority that apply to the Property, or that otherwise relate to a Party's rights or obligations under this Agreement, as such laws, ordinances, rules and regulations may be amended, modified or supplemented and in effect from time to time.

B. "**Arrangement for Disposal**" has the same meaning as given to that term in the case law interpreting Section 107(a)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9607(a)(3).

C. "**Disposal**" has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601(29), and the regulations and agency guidance promulgated thereunder.

D. "**Environment**" means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, flora, fauna, biota and all other natural resources.

E. "**Environmental Laws**" means all Applicable Laws and all covenants running with the land that relate to the protection of health or the Environment whether now existing or hereafter adopted, including without limitation those that relate to the existence, handling, manufacture, treatment, storage, disposal, use, generation, release,

threatened release, discharge, refining or recycling of Hazardous Materials or reclaiming of real property, and all obligations relating to protection of the Environment arising out of any use relating to the Property. Without limiting the foregoing, Environmental Law include the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, (42 U.S.C. § 6901 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001, et seq.), the Occupational Safety and Health Act (26 U.S.C. § 651 et seq.), the Pollution Prevention Act of 1990 (42 U.S.C. § 13101 et seq.), the Atomic Energy Act of 1954, 68 Stat. 919, the Energy Reorganization Act of 1974, the Mine Safety and Health Act of 1977, the Uranium Mill Tailings Radiation Control Act (42 U.S.C. § 7901 et seq.), and all similar or additional federal, state, local or foreign statutes, all as amended, and all regulations promulgated thereunder, in each case as currently existing or as may hereinafter be promulgated.

**F. “Environmental Permit”** means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the SDSTA’s development, construction, equipping, use and/or operation of the Property.

**G. “Environmental Risk Insurance”** means a policy of insurance, underwritten by a reputable insurer with a security rating from A. M. Best of not less than A-VII, or another insurer approved in writing by Homestake in its sole discretion, that provides coverage for remediation and reclamation, bodily injury, property damage, contractual liability and defense costs arising out of or related to SDSTA’s activities on or associated with the Property: (i) risks associated with on-site and off-site cleanup costs, bodily injury and property damage claims relating to pre-existing and new environmental conditions, (ii) risks associated with past or future violations of Environmental Laws, and (iii) risks arising out of the SDSTA’s use, operation, reclamation, closure or remediation of the Property by, as applicable, the State of South Dakota, the SDSTA, and its or their representatives or by anyone else. Such insurance shall specifically include contractual liability coverage (including, in particular, coverage applicable to the contractual indemnifications given by the State of South Dakota and the SDSTA to Homestake and provide coverage for legal defense expenses paid or incurred concerning any claim potentially covered under such insurance. The Environmental Risk Insurance will contain no special limitations on the scope of coverage provided to Homestake.

**H. “Hazardous Material”** means any substance: (i) the presence of which requires reporting, investigation, removal or remediation under any Environmental Laws, including without limitation, mine tailings, waste dumps and other materials; (ii)



that is defined as a "hazardous waste," "hazardous substance" or "pollutant" or "contaminate" under any Environmental Laws; (iii) that is toxic, explosive, corrosive, flammable, ignitable, infectious, radioactive, reactive, carcinogenic, mutagenic or otherwise hazardous and is regulated under any Environmental Laws; (iv) the presence of which on a property causes or threatens to cause a nuisance upon the property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the property; (v) that contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) that contains PCBs, asbestos or urea formaldehyde foam insulation.

I. **"Liabilities"** means all liabilities (whether contingent, fixed or unfixed, liquidated or unliquidated, or otherwise), obligations, deficiencies, demands, claims, suits, actions, causes of action, assessments, losses, costs, interest, fines, penalties, or damages, (including costs or expenses of any and all investigations or proceedings and reasonable fees and expenses of attorneys, accountants and other experts).

J. **"Open Cut"** means the open pit at the Homestake Mine in Lead, South Dakota.

K. **"Property Donation Agreement"** means the April 14, 2006 agreement the Parties entered relating to certain real and personal property located in and near Lead, South Dakota.

L. **"Release"** has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601(22), and the regulations and agency guidance promulgated thereunder, and which release is required to be reported to the relevant governmental authorities under Applicable Law.

2. **Termination of Prior Easements, Easement Agreement and Amendment:** The Parties hereby terminate the Prior Easements, the Easement Agreement, and the Amendment, effective as of the date of this Agreement.

3. **Grant of Replacement Easement:** Subject to the terms and conditions hereof, Homestake hereby grants to SDSTA a permanent Replacement Easement as described and illustrated in Exhibits "C" (which defines the "Property") and "D" attached hereto for the Permitted Uses described herein.

4. **Permitted Uses:** SDSTA may only use the Replacement Easement for the purpose of disposing up to five million (5,000,000) tons of rock excavated from the former Homestake gold mine located in and near Lead, South Dakota to facilitate the construction, enlargement, modification or maintenance of underground laboratory facilities and related support and infrastructure facilities; for access over and across the Replacement Easement; for a tunnel for a conveyor system; and for a conveyor system terminus and support structure (the **"Permitted Uses"**).

**5. Easement Conditions:**

**A. Permits.** Prior to commencing any activities authorized by the Replacement Easement, including, without limitation, use and occupancy of the Property for the Permitted Uses, SDSTA shall obtain all necessary Environmental Permits as well as all other consents, approvals and actions of, filings with, and notices to any governmental authority or third party necessary to permit the SDSTA to use the Replacement Easement and Property. Further, SDSTA shall conduct engineering analysis, geologic mapping and characterization, and all other studies of the Environment required for any Environmental Permit or other governmental or third party consent. Activities authorized by the Replacement Easement may only be commenced after SDSTA provides to Homestake copies of the Environmental Permits and any other necessary permits and approvals.

**B. Engineering Study-High Wall Stability.** SDSTA has caused an engineering study to be completed assessing the impact on high wall stability of the Open Cut by the placement of approximately eight hundred seventy-five thousand (875,000) tons of rock on the Replacement Easement. Homestake has approved the engineering study, which indicated an improved stability following material placement. Prior to placing more than approximately eight hundred seventy-five thousand (875,000) tons of rock on the Replacement Easement, SDSTA shall cause an additional engineering study to be completed to determine if the placement of the additional quantity of excavated rock will adversely impact high wall stability of the Open Cut. A written report summarizing the additional study shall be furnished to Homestake. The additional quantity of excavated rock may only be placed on the Replacement Easement after Homestake, in its sole discretion, acting reasonably, approves the additional engineering study and report.

**C. Further Engineering, Geologic, Reclamation, and Other Studies.** Prior to commencing any activities authorized by the Replacement Easement, including, without limitation, use and occupancy of the Property for the Permitted Uses, SDSTA shall conduct other studies required by any governmental authority, or such other studies necessary to demonstrate that use of the Open Cut, including the deposition of all materials and substances in the Open Cut, the Property, and the surrounding Environment for Permitted Uses will not have an unreasonably negative impact. These studies will include, without limitation, engineering, geologic, reclamation, transportation (on or off Property), archeology, or historic preservation studies. Such studies must be approved in writing by Homestake in its sole discretion, acting reasonably, before SDSTA may use or occupy the Property for the Permitted Uses. Such approval shall not relieve SDSTA from its responsibility for all Liabilities or its obligation to indemnify Homestake, all as set forth in this Agreement.

**D. General Conditions.**



(1) Excavated rock generated by SDSTA may be brought to the surface and delivered to the Replacement Easement or delivered from the underground directly to the Replacement Easement. Excavated rock brought to the surface will be transported to the Replacement Easement via truck, a conveyer system or some combination of the two. SDSTA will manage and pay for the design, construction, maintenance, and demolition of any new installations or modifications of or within the Replacement Easement to facilitate transportation of excavated rock to the Replacement Easement.

(2) SDSTA shall use reputable professional engineering firms to provide designs for such installations, which designs shall be subject to Homestake's review and approval. Homestake agrees to expedite its review of design documents and in any event to respond with approval or requests for changes within 60 days of submission of a design document.

(3) A written report summarizing the chemical, physical, and geological characteristics of the excavated rock material proposed to be deposited on the Replacement Easement shall be furnished to Homestake. Excavated rock may only be deposited on the Replacement Easement after Homestake, in its sole discretion, acting reasonably, approves the characteristics and report.

(4) SDSTA shall be responsible for all environmental controls associated with the transportation and disposal of excavated rock hereunder.

(5) Excavated rock shall be placed such that all water drainage from the material placed by SDSTA flows to the SDSTA's facilities, to be treated by SDSTA before discharged to the environment.

(6) Quantities of placement shall be limited by physical space availability only, with expected quantities in the range of eight hundred seventy-five thousand (875,000) to five million (5,000,000) tons, subject to the requirements of this Agreement, including, without limitation, the additional study under Section 5.B for placement of material in excess of approximately eight hundred seventy-five thousand (875,000) tons.

(7) If the conveyor system is not reasonably anticipated to be used within 10 years, it shall be removed from the Replacement Easement by SDSTA. Removal shall include the removal of the conveyor system, conveyor system terminus, conveyor system support structure, tunnel structure, and tunnel, including backfilling of the tunnel space. Upon removal of the foregoing facilities and structures, the areas where they were located shall be returned to a similar or better condition than prior to commencement of work.

E. **Non-Exclusive.** The Replacement Easement granted herein is non-exclusive, and Homestake reserves the right to enter the Replacement Easement, at its own risk. Homestake cannot unreasonably interfere with the SDSTA's Permitted Uses under this Replacement Easement.

6. **Health and Safety Plan:** Prior to SDSTA commencing any work or activities on Homestake real property, SDSTA and Homestake will develop a site-specific health and safety plan, to be approved by Homestake, in its sole discretion. The health and safety plan will include all of Homestake's safety, reporting and emergency protocols. SDSTA will comply with instructions from Homestake employees regarding health and safety matters. It is the responsibility of SDSTA to contact One Call to ensure all utilities are located.

7. **Insurance, Limitation of Liability, and Indemnity:**

A. **Employment Insurance.** SDSTA shall comply with all state and federal social security and unemployment insurance laws.

B. **Insurance.** SDSTA, from the time of commencement of any activities authorized by the Replacement Easement, shall provide and maintain in effect the types and amounts of insurance indicated in this Section with insurance companies approved by Homestake in its sole discretion. Such coverage will be documented and SDSTA will forward such documentation to Homestake prior to use or occupancy of the Property.

(1) **Worker's Compensation Insurance.** SDSTA shall secure worker's compensation insurance, including Occupational Disease (as that term is defined by South Dakota law) insurance in accordance with the laws of the State of South Dakota, and Employers' Liability Insurance in the amounts of not less than \$500,000 per person, and \$500,000 per accident.

(2) **General Liability Insurance.** SDSTA shall secure general liability insurance naming the Homestake Indemnified Parties (as that term is used in the Property Donation Agreement) as additional insureds that provides coverage for contractual liability, as well as the indemnity agreement set forth in this Agreement and products-completed operations coverage with limits of not less than \$2,000,000 and not more than \$5,000,000 applicable to bodily injury, sickness or death in any one occurrence; and not less than \$2,000,000 and not more than \$5,000,000 for loss of or damage to property in any one occurrence.

(3) **Environmental Risk Insurance.** SDSTA shall secure Environmental Risk Insurance naming Homestake the Homestake Indemnified Parties (as that term is used in the Property Donation Agreement) as additional insureds to cover any and all on-site and off-site pollution for its use or occupancy of the Property for the Replacement Easement and Permitted Uses, or provide for such coverage under policies

SDSTA maintains under the Property Donation Agreement. By way of clarification, apart from the requirements of this section to ensure Homestake and its Affiliates are additional insureds and ensuring coverage under the existing policy or policies of the Property and for the Permitted Uses, SDSTA need not purchase additional environmental risk insurance beyond that required under the Property Donation Agreement.

(4) **Subcontractors' Insurance.** SDSTA shall require all of its contractors and subcontractors to obtain, maintain and keep in force during the time in which they are engaged in performing work hereunder, the coverages set forth in subparagraphs (1) and (2) above, and subparagraph (6) below, and shall furnish Homestake acceptable evidence of such insurance prior to starting work on the Homestake real property. If any contractors or subcontractors do not obtain, maintain and keep in force the required coverages, then SDSTA will be deemed to have elected to provide the required coverages under policies SDSTA maintains hereunder, or under policies SDSTA maintains under the Property Donation Agreement. Such coverage will be documented and forwarded to Homestake prior to use or occupancy of the Property.

(5) **Equipment Insurance.** All equipment, supplies and materials belonging to SDSTA or used by or on behalf of SDSTA for its performance hereunder shall be brought to and kept at the job site at SDSTA's sole cost, risk and expense, and Homestake shall not be liable for loss or damage thereto. Any insurance policies carried by SDSTA or any third party on said equipment, supplies and materials shall provide for waiver of the underwriter's right to subrogation against Homestake.

(6) **Automobile Liability Insurance.** SDSTA shall secure automobile liability insurance covering owned, non-owned, and hired vehicles used by SDSTA in limits not less than \$1,000,000 applicable to bodily injury, sickness or death of any one person, and \$1,000,000 for more than one person in any one occurrence; and \$1,000,000 for loss of or damage to property in any one occurrence.

(7) **Nuclear Liability Insurance.** In the event that the SDSTA produces neutrinos or particles with a reactor on the Property, SDSTA shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, nuclear liability insurance naming Homestake as an additional insured from American Nuclear Insurers with a combined property damage and bodily injury limit of liability in an amount determined by the Nuclear Regulatory Commission (NRC) covering all nuclear reactors, nuclear materials and nuclear waste in connection with the use of the Property. The deductible shall be not greater than \$250,000 per accident.

(8) **Subrogation.** All policies shall be endorsed to provide that the underwriters and insurance companies of SDSTA shall not have any rights of subrogation against Homestake, or against any subsidiaries, agents, employees, invitees, servants, subcontractors, insurers, underwriters, and such other parties as Homestake may designate.

(9) **Certificates.** SDSTA shall furnish Certificates of Insurance to Homestake evidencing the insurance required hereunder and, upon request, Homestake may examine true copies of the actual policies. Each certificate shall provide that thirty (30) days prior written notice shall be given the Homestake in the event of cancellation or material change in the policies. All policies shall be endorsed to provide that there will be no recourse against Homestake for payment of any premium.

(10) **Additional Insurance.** By so specifying, Homestake may reasonably require additional types of insurance; provided, however that the limits thereof may not exceed the limits of liability stated in this Agreement..

(11) **Primary Insurance.** It is hereby understood and agreed that any coverage provided Homestake by SDSTA's insurance under this Agreement is primary insurance and shall not be considered contributory insurance with any insurance policies of Homestake.

**C. Limit of Liability.**

(1) SDSTA shall be responsible for all Liabilities, including, without limitation, the liabilities set forth in Section 7.D.(1) through 7.D.(6); provided, however, anything elsewhere in this Agreement to the contrary notwithstanding, that SDSTA's responsibility for Liabilities, including but not limited to any responsibility to indemnify set out in this Agreement, shall be limited to Liabilities resulting from SDSTA's use and occupancy of the Property.

(2) The Parties agree that there are no covenants between them regarding the fitness or suitability of the Property for the Replacement Easement or Permitted Uses. WITHOUT LIMITING THE FOREGOING, HOMESTAKE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES CONCERNING THE SUITABILITY OF THE PROPERTY FOR ANY OF SDSTA'S INTENDED USES OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION AND SDSTA'S USE OF THE PROPERTY FOR THE REPLACEMENT EASEMENT AND PERMITTED USES SHALL BE 'AS IS, WHERE IS' WITH ALL FAULTS.

**D. Indemnification.** SDSTA agrees to and does hereby release, indemnify and hold the Homestake Indemnified Parties harmless from and against all Liabilities, including, without limitation, the following:

(1) Any and all claims and liabilities, including, without limitation, costs, attorneys' fees, and expenses, for bodily injury to, or death of, persons, (including claims and liabilities for care or loss of services in connection with any bodily injury or death);

(2) Any and all claims and liabilities, including, without limitation, costs, attorneys' fees, and expenses, for loss or destruction of or damage to any property belonging to SDSTA or others (including claims or liabilities for loss of use of any property);

(3) Any and all claims, losses, and liabilities, including, without limitation, costs, attorneys' fees, and expenses, for any damage to Homestake property (including without limitation any environmental damages or liability) arising from any negligent or wrongful activities of SDSTA, its agents, representatives, contractors, or subcontractors;

(4) Any and all claims, losses, and liabilities, including, without limitation, costs, attorneys' fees, and expenses, for loss (including loss of use) or destruction of or damage to (a) materials, supplies, equipment and other property necessary for the work, or (b) any property of SDSTA, its agents, representatives, contractors, or subcontractors;

(5) Any and all claims, losses, and liabilities, including, without limitation, costs, attorneys' fees, and expenses, resulting directly or indirectly from or occurring in the course of SDSTA's exercise of its rights under the Replacement Easement, including, without limitation, transportation activities on, to, or from the Property or for purposes of the Replacement Easement; and

(6) Any and all claims, losses, and liabilities, including, without limitation, costs, attorneys' fees, and expenses, resulting directly or indirectly from (a) damage to the Environment from or related to SDSTA's, or its agent's, representative's, contractor's, or subcontractor's, use or occupancy of the Properties for the Replacement Easement or Permitted Uses, (b) violation or alleged violation of Applicable Laws or Environmental Laws, or (c) violation or alleged violation of or failure to secure Environmental Permits or other governmental consents or approvals.

**8. Perpetual Easement, Termination for Non-Use:** The Replacement Easement granted herein shall be a perpetual easement which shall run with the land and be binding upon, and inure to the benefit of, the Parties and their successors and assigns. Provided, however, that if SDSTA does not dispose of excavated rock within the Replacement Easement area within twenty (20) years of the date of recording of this Agreement, SDSTA's rights hereunder shall cease and shall no longer have any force or effect.

**9. Notices:** Any notice, election or other correspondence required or permitted hereunder shall be deemed to have been properly given or delivered when made in writing and delivered personally to the Party to whom directed, or when deposited in the United

States mail, postage prepaid, by certified mail, return receipt requested, and addressed to the Party to whom directed as follows:

If to Homestake: Homestake Mining Company of California  
Attn: Site Manager  
11457 Bobtail Gulch Street  
Central City, SD 57754

With a copy to: Homestake Mining Company of California  
Attn: Vice President & General Counsel, North America  
310 South Main, Suite 1150  
Salt Lake City, UT 84101

If to SDSTA: South Dakota Science and Technology Authority  
Attn: Mike Headley, Executive Director  
630 E. Summit  
Lead, SD 57754

10. **Time of Essence:** Time is of the essence of this Agreement.

11. **Compliance With All Laws:** In performing work under this Agreement, SDSTA, its contractors and subcontractors, shall comply with all applicable Federal, State and local laws, rules and regulations.

12. **Neutral Construction:** This Agreement and the wording contained herein accords with the negotiations of the Parties. Accordingly, no provision hereof shall be construed against one Party or in favor of another Party merely by reason of draftsmanship.

13. **Interpretative Matters:** References to Sections and Exhibits in this Agreement are to Sections of this Agreement and to the Exhibits attached hereto. Words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter. When not expressly stated, the word "including" means "including but not limited to."

14. **Assignment:** Neither this Agreement nor any of the obligations, liabilities, rights and benefits arising hereunder may be assigned by either Party without the express written consent of the other Party; provided, however, that SDSTA may without Homestake's consent assign its interest herein to the United States of America, acting through the Department of Energy, upon written notice thereof to Homestake.

15. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. This Agreement



may only be amended, modified or supplemented by a written instrument signed by all the Parties expressly stating that such instrument is intended to amend, modify or supplement this Agreement.

**16. Governing Law, Jurisdiction and Venue, and Service of Process:** This Agreement shall be construed under and governed by the laws of the State of South Dakota, without the application of the conflicts of law principles thereof, and any applicable federal law. Any lawsuit arising out of or related to this Agreement shall be brought in the state courts of South Dakota. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, service of process on a Party may be made by mail upon the designated person at the address provided in Section 8.

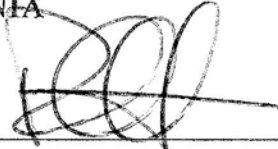
**17. Severability:** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. A provision of similar economic effect shall be substituted for any invalid, illegal or unenforceable provision.

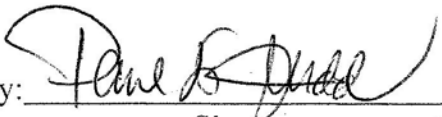
**18. Counterparts:** This Agreement may be signed in counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. The Parties intend that fax signatures constitute original signatures and that a faxed agreement containing the signatures (original or faxed) of all the Parties is binding on the Parties.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement the day and year first above written.


*[SIGNATURE PAGES FOLLOW]*

HOMESTAKE MINING COMPANY OF  
CALIFORNIA

Dated 11/28/2018, 20\_\_ . By:   
Signature  
**Peter Webster**  
Director  
Printed Name and Title

Dated 12/3/2018, 20\_\_ . By:   
Signature  
**Paul D. Judd**  
CFO & Tax Director  
Printed Name and Title

SOUTH DAKOTA SCIENCE AND TECHNOLOGY  
AUTHORITY

Dated December 6, 20 18. By:   
Casey Peterson  
Signature  
Chairperson of the Board  
Printed Name and Title



STATE OF Utah )  
 ) ss. CORPORATE ACKNOWLEDGMENT  
COUNTY OF Salt Lake )

On this the 28<sup>th</sup> day of November, 2018, before me, the undersigned officer, personally appeared Peter Webster, known to me to be the Director for **HOMESTAKE MINING COMPANY OF CALIFORNIA**, and on oath stated that he was authorized to sign the foregoing instrument on behalf of the corporation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Kari Herron  
Notary Public  
My Comm. Expires 4/18/22

STATE OF Utah )  
 ) ss. CORPORATE ACKNOWLEDGMENT  
COUNTY OF Salt Lake )

On this the 3rd day of December, 2018, before me, the undersigned officer, personally appeared Paul D. Gidd, known to me to be the CFD & Tax Director for **HOMESTAKE MINING COMPANY OF CALIFORNIA**, and on oath stated that he was authorized to sign the foregoing instrument on behalf of the corporation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Kari Herron  
Notary Public  
My Comm. Expires 4/18/22

STATE OF SOUTH DAKOTA )

) ss. **CORPORATE ACKNOWLEDGMENT**

COUNTY OF PENNINGTON )

On this the 6th day of December, 2018, before me, the undersigned officer, personally appeared Casey Peterson, known to me to be the Chairperson of the Board for **SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY**, and on oath stated that he was authorized to sign the foregoing instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Krista Chisolm  
Notary Public  
My Comm. Expires 11.7.2023

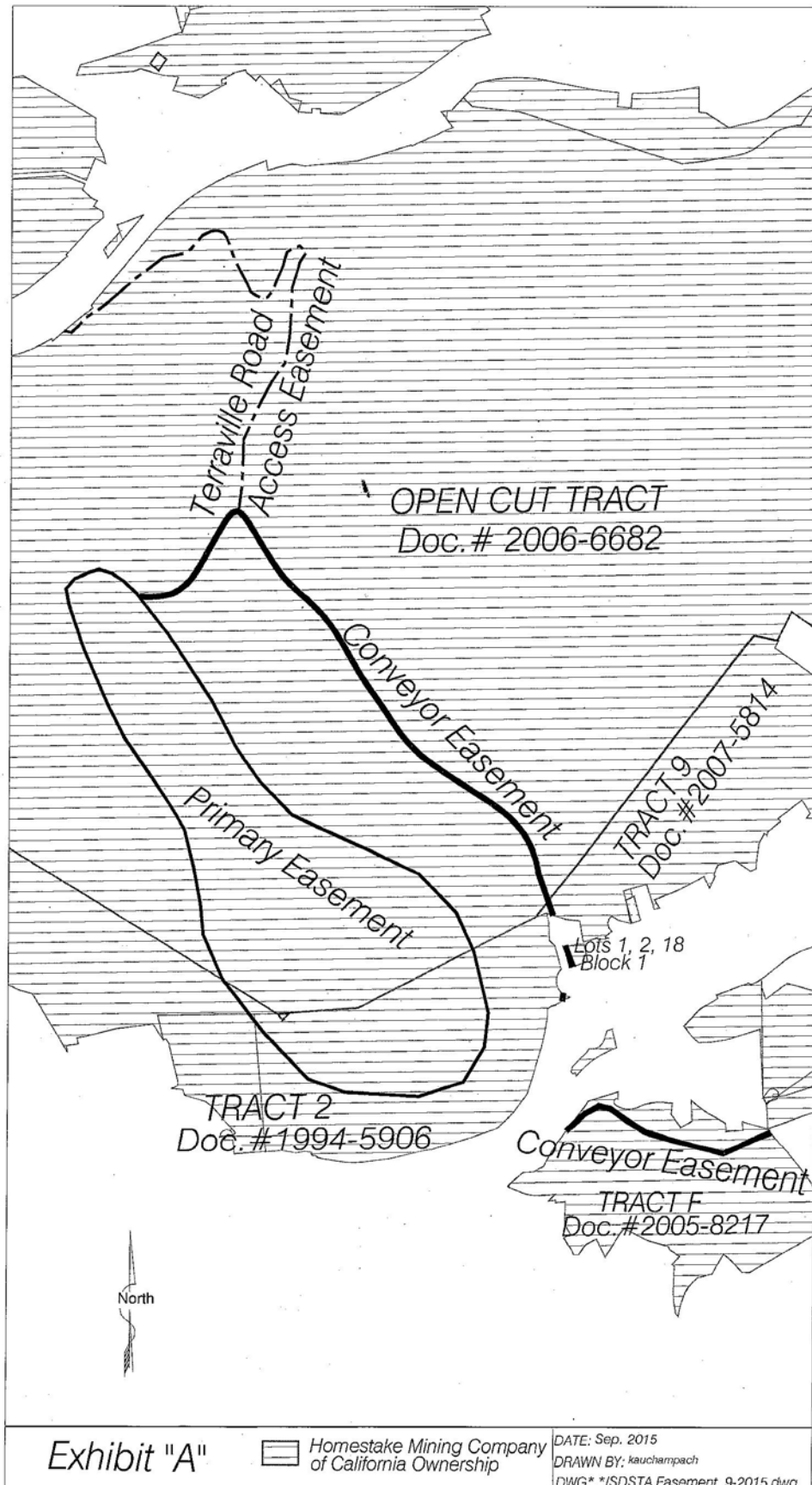
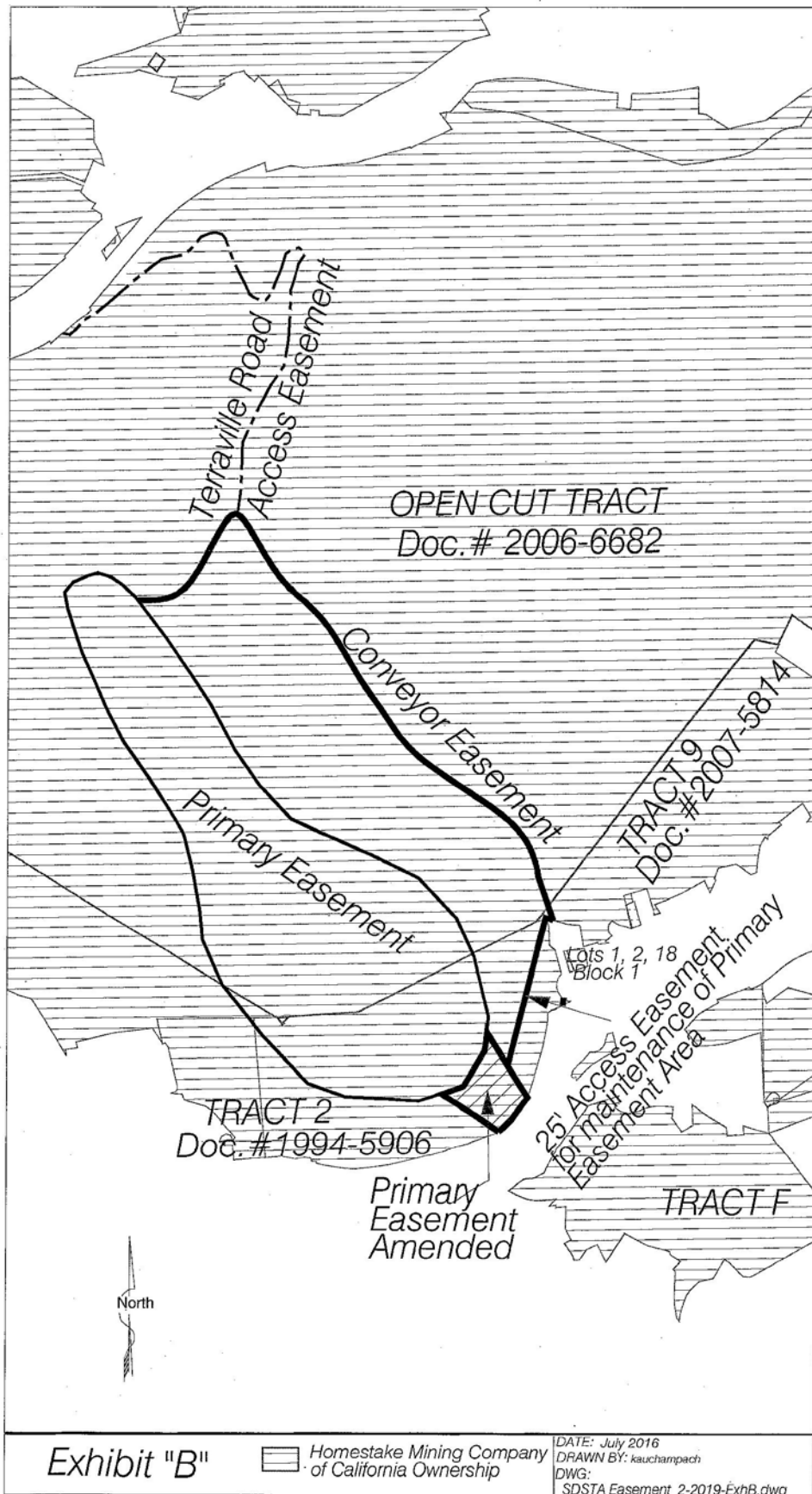


Exhibit "A"

Homestake Mining Company  
of California Ownership

DATE: Sep. 2015  
DRAWN BY: kauchampach  
DWG:\*/SDSTA Easement 9-2015.dwg

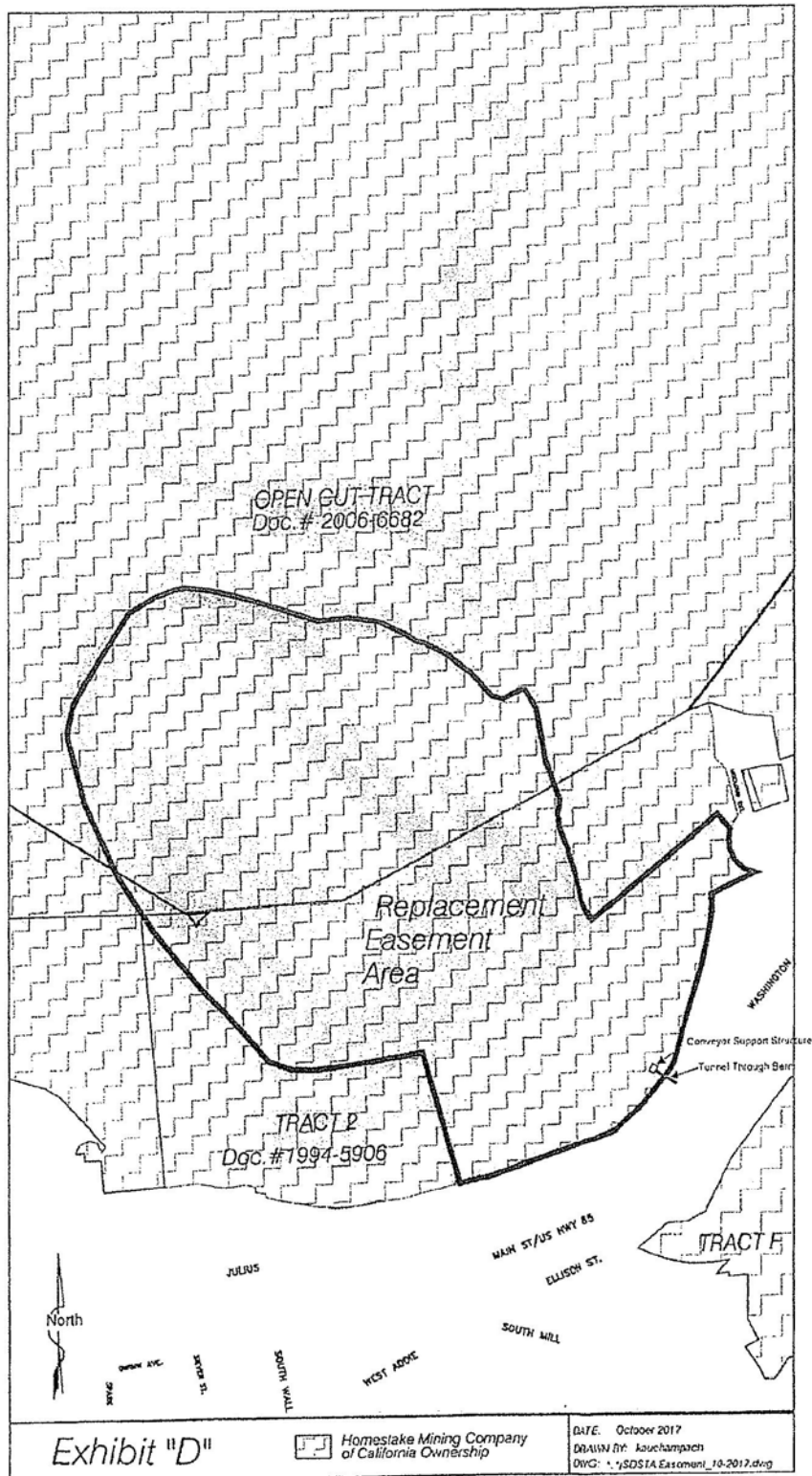


## Exhibit "C"

### Replacement Easement

A portion of the Open Cut Tract, being portions of the Highland Chief lode claim, M.S. 50 et al., and located in portions of Sections 27, 28, 29, 32, 33 and 34, T5N, R3E, B.H.M., City of Lead, Lawrence County, South Dakota, as shown on that certain Plat recorded in the office of the Lawrence County Register of Deeds as Plat Document No. 2006-6682; and

A portion of Tract 2, Homestake Addition to the City of Lead, as shown on that certain Plat recorded in the office of the Lawrence County Register of Deeds as Plat Document No. 1994-5906, including a portion of Lot AB1 (Plat 1997-2859) and a portion of vacated Spring Street, all as generally shown on Exhibit D attached.



## **Exhibit C**

to Facility and Land Use Agreement  
Homestake Mining Company Property

### **(Statement of Work)**

Work will consist of everything necessary to create safe access and operate, maintain a covered conveyor system to allow transport of excavated rock from the base of the current ore bins inside the "tramway" level, through the length of the tramway and overland toward the open cut. Specific elements of this work may include:

- Operation and maintenance during the excavation of approximately 875,000 short tons of rock generated by the LBNF project. Access to conveyor system located on SDSTA property may be from Ellison Street, Pine Street, through the tramway via either the Ross or Yates Shafts, and/or SDSTA's road at the Mill Reservoir.
- If contracted for in the future, work may include removal of the conveyor system.

**FACILITY AND LAND USE AGREEMENT  
CITY OF LEAD PROPERTY**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between the South Dakota Science and Technology Authority, 630 E. Summit Street, Lead, SD, 57754 ("SDSTA") and Thyssen Mining Inc., 377 Sunshine Lane, Spring Creek, Nevada 89815 ("TMI").

**RECITALS**

A. It is anticipated that TMI, pursuant to the terms of a subcontract ("TMI Contract") assigned to Fermi Research Alliance, LLC ("FRA") by Kiewit – Alberici, a Joint Venture pursuant to the Fermilab Subcontract for Long Baseline Neutrino Facility ("LBNF") Far Site Facilities, executed on July 27, 2017 (the "Fermilab Subcontract"), will be tasked with operating and maintaining a temporary rock conveyor system ("TRCS") across and through property owned by the City of Lead, South Dakota, (the "City"), and others. The TRCS will be used to move rock excavated from the 4850' level across property owned by SDSTA, the City, and potentially others into the "Open Cut" site owned by Homestake Mining Company of California, all in connection with the construction of the LBNF Far Site Facilities.

B. The TRCS is a conveyor system with an appropriate safety enclosure for the portion of the conveyor that is above ground.

C. The route of the TRCS across and through City-owned real estate is shown on Exhibit A, attached hereto and incorporated herein by this reference. Exhibit A also shows the location of access for operation, maintenance and removal of the TRCS across and through City-owned real estate. The property subject to the rights granted hereunder and described on the attached Exhibit A is referred to hereinafter as the "City TRCS Use Area."

D. The City has granted SDSTA an easement, including a right of access, as described in the Easement attached hereto, marked as Exhibit B, and incorporated herein by this reference (the "City Easement").

E. TMI will require access to, and temporary possession of, the City TRCS Use Area for the purpose of maintenance, operation and removal of the TRCS.

F. SDSTA desires to make a grant to TMI and its subcontractors and necessary licenses and invitees (including but not limited to FRA and the United States of America, acting through the Department of Energy) of the rights granted to SDSTA under the City Easement, and TMI desires to accept said grant of access, right of temporary possession, all according and subject to the terms and conditions set forth herein.

**AGREEMENT**

For and in consideration of the foregoing Recitals and the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties AGREE as follows:



1. SDSTA hereby grants TMI and its subcontractors and reasonably necessary licensees and invitees (including but not limited to FRA and the United States of America, acting through the Department of Energy) a temporary, limited, and revocable right of use and access to enter upon the City TRCS Use Area for the sole and limited purpose of maintaining, operating and removing the TRCS as described on the attached Exhibit C (the "Work"). Pursuant to the Lease entered into between SDSTA and the U.S. Department of Energy on or about March 29, 2016, ownership of and responsibility for excavated rock deposited into the Open Cut remains with SDSTA, and TMI is not liable for any environmental concerns, safety hazards, or aesthetic concerns arising from the physical composition of the deposited excavated rock. TMI shall deposit excavated rock in accordance with the Letter of Direction issued by SDSTA dated April 3, 2020. Nothing herein shall act to limit TMI's responsibility to transport and deposit the excavated rock in a safe and prudent manner, or to limit TMI's liability for the failure so to do.

2. The foregoing grant is subject to the following terms and conditions:

a. Any changes to Exhibit A must be approved in writing by SDSTA's Representative prior to commencing any part of the Work or implementation of any change after the commencement of the Work. Any material changes to Exhibit C must be provided to SDSTA's Representative at least twenty (20) days prior to implementation;

b. At least ten (10) business days prior to commencement of the Work, TMI must provide SDSTA's Representative with proof, reasonably acceptable to SDSTA, of the existence of the insurance coverages required under section A, paragraph 5 of the Fermilab Subcontract;

c. Any health or safety hazards resulting from the Work performed by TMI (including but not limited to trip and fall hazards) must be appropriately mitigated at the end of each day during which the Work is conducted, and may not be left unattended if not mitigated. In the event that TMI discovers health or safety hazards not created by the Work, TMI shall notify SDSTA of the hazard;

d. Without limiting the generality of any of the foregoing, TMI must comply with SDSTA's environment, safety, and health (ESH) requirements;

e. Any City or SDSTA employee or representative may require TMI to stop the Work in the event of an actual or perceived health or safety hazard until such time as the hazard is mitigated to the satisfaction of SDSTA's Representative;

f. The City TRCS Use Area must be appropriately secured, all construction rubble and waste must be removed therefrom, and it must otherwise be maintained in a manner consistent with the surrounding real estate owned by the City and so as not create an eyesore;

g. Neither TMI nor any of its contractors, subcontractors, agents, licensees and invitees may authorize or allow any mechanics, materialmen, vendors, or other lien of any kind or nature whatsoever to attach to the real estate subject to this Agreement, nor to any part thereof or interest therein. If any such lien shall attach to said real estate, TMI shall, at its own expense, promptly take all steps necessary to obtain the discharge and release of any such lien. TMI shall indemnify and hold the City and SDSTA harmless from and against any such liens;

h. TMI shall not violate the covenants, terms, and conditions of the City Easement, including without limitation sections 2, 3, and 5 thereof; provided, however, that TMI shall have no obligation to provide the specific insurance required by subsection 3(f) of the City Easement; and further provided, however, that TMI shall not have any obligation arising under the terms of the City Easement to indemnify the City. The foregoing and anything elsewhere in this Agreement to the contrary notwithstanding, TMI acknowledges and agrees that the Work to be conducted on and around the City TRCS Use Area is a part of the scope of work described in Attachment A to the TMI Contract. TMI further acknowledges and agrees that the obligation to provide certain insurance coverages to the City, SDSTA, and others (including commercial general liability coverage and pollution liability coverage) and the obligation to indemnify the City, SDSTA, and others, as set out on pages 15-20 and 68-70 in the Fermilab Subcontract, also apply to the Work to be performed under this Agreement. Upon request by SDSTA, TMI shall provide copies of any insurance policy (including applicable endorsements) required by the terms of this Agreement to SDSTA;

i. Without limiting the generality of the reference to sections 2, 3, and 5 of the City Easement stated above in subsection 2(h), TMI acknowledges and agrees it is solely responsible for obtaining any and all necessary permits for the Work on the City Easement; SDSTA will cooperate with TMI to obtain any necessary permits; and

j. TMI and its contractors, subcontractors, agents, licensees and invitees shall comply with SDSTA's Risk Transfer Protocols, a copy of which has been provided to TMI.

3. TMI will re-convey to SDSTA all rights related to the City Easement granted hereunder within one hundred eighty (180) days of final completion of the TMI Contract for LBNF or, if FRA directs TMI to remove the TRCS and executes a change order to TMI for the removal, upon final completion of the removal, whichever is later. TMI is not expected or required to commence removal work until the change order is executed by FRA. If FRA does not direct TMI to remove the TRCS, then TRCS removal will be addressed under the terms of existing and future agreements between and among FRA, SDSTA, and the City concerning its removal. In addition, TMI will re-convey to SDSTA all rights to the City Easement granted hereunder for cause upon ninety days (90) written demand from SDSTA, provided the cause giving rise to the demand remains uncured at the end of said ninety (90) day period. As used in this Agreement, the term "cause" includes, but is not limited to, any violation by TMI of the covenants, terms, and conditions of this Agreement or of the City Easement. In the event FRA terminates the TMI Contract, this Agreement shall terminate. TMI's acknowledgments and agreements relating to indemnification and insurance set out above in subsection 2(h), and the provisions of sections 2(g), 6, 8, 9, and 10 of this Agreement shall survive re-conveyance to SDSTA of TMI's rights hereunder and shall also survive termination of this Agreement for any reason.

4. Nothing herein is intended to modify or waive any insurance, indemnification, or other requirements in any existing contracts that act in favor of SDSTA or the City.

5. For the purposes of this Agreement, SDSTA's Representative is Tim Baumgartner, (605) 390-5035, [tbaumgartner@sanfordlab.org](mailto:tbaumgartner@sanfordlab.org).

6. The parties acknowledge and agree that there are no covenants between them regarding

the fitness or suitability of the property covered by the City Easement for a Permitted Uses (as that term is defined and used in the City Easement). The parties further acknowledge that the route for the TRCS has already been chosen, the TRCS is already being installed, and that TMI had no role in the route selection or the installation of the TRCS. WITHOUT LIMITING THE FOREGOING, SDSTA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES CONCERNING THE SUITABILITY OF SAID PROPERTY FOR ANY OF TMI'S INTENDED USES OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION AND TMI'S USE OF THE PROPERTY FOR A PERMITTED USE (AS THOSE TERMS ARE DEFINED AND USED IN THE CITY EASEMENT) UNDER THE CITY EASEMENT SHALL BE "AS IS, WHERE IS" WITH ALL FAULTS. Nothing in this section 6 shall act to amend, modify, or waive any express or implied representations or warranties made by FRA under or in connection with the Fermilab Subcontract.

7. Except as otherwise provided above in section 1 concerning subcontractors and reasonably necessary licensees and invitees (including but not limited to FRA and the United States of America, acting through the Department of Energy), TMI's rights and obligations hereunder may not be assigned, nor may any rights hereunder be granted to any other party, absent SDSTA's prior written consent. TMI acknowledges that any such consent may, among other things, be conditioned upon approval from the City. From time to time as SDSTA may reasonably require, TMI shall provide to SDSTA a list of all subcontractors, licensees, and invitees who have been or are projected to be granted access to the City TRCS Use Area and if requested, a description of the reason for the grant of access.

8. Nothing herein is intended to obligate SDSTA to undertake or pay for any of the Work or for SDSTA to undertake or pay the cost of compliance by TMI with the terms and conditions of the City Easement or this Agreement.

9. Nothing herein shall act to discharge, release, or modify SDSTA's obligations under the City Easement, including, without limitation, to indemnify or provide proof of insurance to the City as provided in subsection 3(g) and section 4 of the City Easement.

10. The terms of this Agreement shall be construed under and governed by the laws of the State of South Dakota, without respect to the conflicts of law principles thereof. The parties were both represented by legal counsel in connection with the drafting of this Agreement and have engaged in negotiations concerning the terms and provisions hereof. Accordingly, the parties do not intend that the rule relating to the interpretation of contracts against the drafter be applied to this Agreement or any provision hereof or to any other agreement or instrument executed in

connection herewith, and hereby waive the application of any such rule. This Agreement may only be amended by a written document, executed with the same formalities as this Agreement. Any lawsuit arising out of related to this Agreement must be brought in a court of the Unified Judicial System of the State of South Dakota.

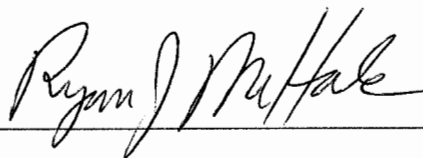
SOUTH DAKOTA SCIENCE AND  
TECHNOLOGY AUTHORITY

\_\_\_\_\_  
BY:

ITS:

DATE:

THYSSEN MINING INC.

  
\_\_\_\_\_

BY: Ryan J. McHale

ITS: Chief Operating Officer

DATE: Nov 5, 2020

CONSENT TO GRANT

City of Lead, 801 West Main St, Lead, South Dakota, 57754, hereby consents to the foregoing grant of use and access upon the terms set forth therein.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss

On this the \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the Director for CITY OF LEAD, and on oath stated that he was authorized to sign the foregoing instrument on behalf of the corporation for the purposes therein contained.

IN WITNESS WHERE OF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_

State of South Dakota )  
 )ss  
County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2020, before me the undersigned officer,  
personally appeared Casey Peterson, who acknowledged himself/herself to be the  
Chairperson of South Dakota Science and Technology Authority, a public entity, and that he/s he  
as such Chairperson, being authorized so to do, executed the foregoing name of the public  
entity by himself/herself as Chairperson

IN WITNESS WHEREOF I hereunto set my hand and official seal this \_\_\_\_ day of  
\_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Print Name:  
My Commission Expires:

State of Nevada )  
 )ss  
County of Nye )

On this the 5th day of November, 2020, before me the undersigned officer,  
personally appeared RYAN MCHALE, who acknowledged himself/herself to be the  
Chief Operating Officer (COO) of TMI, and that he/she as such COO, being authorized so  
to do, executed the foregoing name of the public entity by himself/herself as COO

IN WITNESS WHEREOF I hereunto set my hand and official seal this 5th day of  
November,  
2020.

Alexander Frizzelle  
Notary Public

(SEAL)

Notary Print Name: Alexander Frizzelle  
My Commission Expires: 2-17-2024

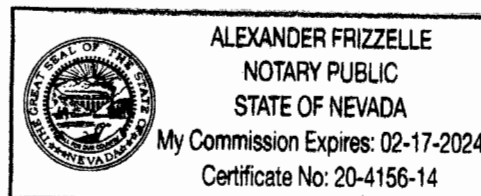
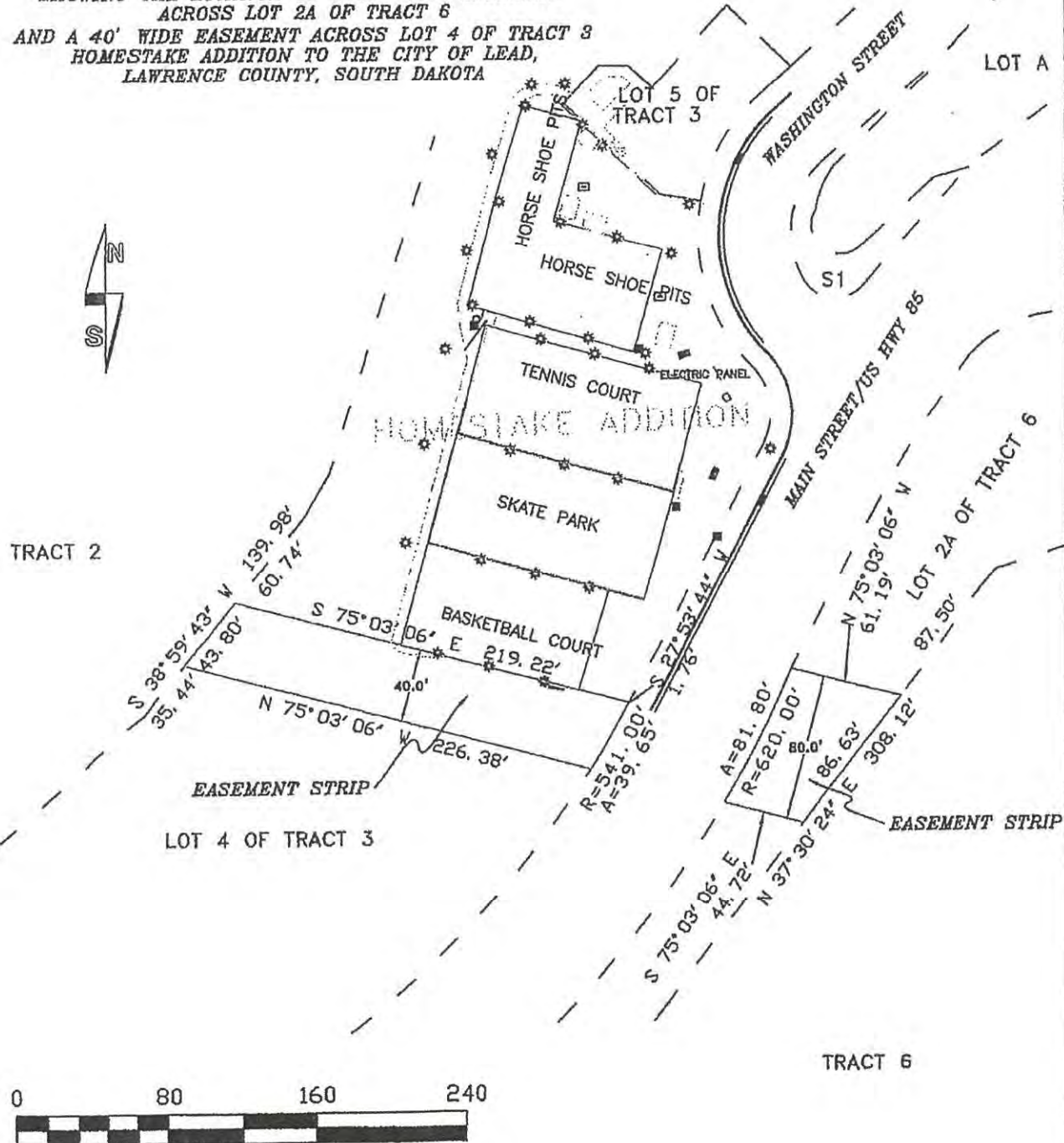


Exhibit A  
to Land Use Agreement

City of Lead Property

SHOWING THE LOCATION OF A 80' WIDE EASEMENT  
ACROSS LOT 2A OF TRACT 6  
AND A 40' WIDE EASEMENT ACROSS LOT 4 OF TRACT 3  
HOMESTAKE ADDITION TO THE CITY OF LEAD,  
LAWRENCE COUNTY, SOUTH DAKOTA



Prepared By:  
**PONDEROSA LAND SURVEYS, L.L.C.**  
332A WEST MAIN ST.  
LEAD, SD 57754  
(605) 402-0010

Date:	3/30/2016
Drawn By:	L. D. Vrem
Project No.:	16-85
Drawn No.:	16-85.dwg



Exhibit B  
to Land Use Agreement

City of Lead Easement

Prepared by:  
Timothy M. Engel  
May, Adam, Gerdes & Thompson LLP  
503 S. Pierre Street  
PO Box 160  
Pierre, South Dakota 57501  
605-224-8803



Doc #: 2016-01972  
Date: 05/04/2016 10:24:00  
Sheree L. Green  
Register of Deeds  
Lawrence Co. - Fee \$30.00

## EASEMENT

This Easement is made and entered into this 2nd day of MAY, 2016, by and between the City of Lead, South Dakota, a South Dakota municipal corporation, 801 W. Main Street, Lead, South Dakota, 57754 ("Grantor") and the South Dakota Science and Technology Authority, 630 East Summit Street, Lead, South Dakota, 57754 ("Grantee"). For and in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Subject to the terms and conditions hereof, Grantor hereby donates and grants to Grantee a permanent easement for, over and upon the real estate described on the attached Exhibit "A", as further described on the attached Exhibit "A," for the permitted uses described herein (the "Easement").

2. Permitted Uses. Grantee may only use the Easement for the purpose of the construction, maintenance and operation of an overhead conveyor system to be used to dispose of waste rock excavated from the former Homestake gold mine located in and near Lead, South Dakota for the purposes of the construction, enlargement, modification or maintenance of underground laboratory facilities and related support and infrastructure facilities (the "Permitted Use").

3. Further Conditions of the Easements. The Easement is subject to the following further terms and conditions:

(a). The overhead rock conveyor system shall be designed and constructed generally as shown on the attached Exhibit "B," which is incorporated herein by this reference. The overhead rock conveyor system shall be designed by reputable design professionals and constructed by a reputable contractor or contractors. The design and construction shall conform to current industry standards relating to such systems.

(b). When the overhead rock conveyor system is placed in operation, Grantee shall maintain all required environmental and safety features, such as dust suppression, noise suppression and lighting, in good working order and in accordance with industry standards.

(c). Grantee shall maintain the overhead rock conveyor system in good working order such that it will not pose a danger to the general public while in operation, and will maintain its appearance and keep it and the surrounding real estate covered by the Easement free of debris.

(d) In the event Grantee or anyone entering the Easement under the authority of Grantee damages or destroys any existing improvements or facilities located upon the Easement, Grantee shall promptly repair or replace any such improvements or facilities at Grantee's expense.

(e) The Easement granted herein is non-exclusive, and Grantor reserves the right to enter the Easement. However, Grantor may not unreasonably interfere with the Grantee's Permitted Use under this Easement.

(f) Grantee shall secure general liability insurance naming Grantor as an additional insured that provides coverage for contractual liability, as well as the indemnity agreement set forth in this Agreement with limits of not less than \$2,000,000 and not more than \$5,000,000 applicable to bodily injury, sickness or death in any one occurrence; and not less than \$2,000,000 and not more than \$5,000,000 for loss of or damage to property in any one occurrence.

4. Indemnification by Grantee. To the fullest extent allowed by applicable law, including SDCL 1-16H-15(18), Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, causes, actions or causes of action (and including related costs of litigation and a reasonable attorney fee) directly arising from Grantee's activities on and directly related to the Easement; provided, however, that nothing herein shall require Grantee to indemnify Grantor for any claims, causes, actions or causes of action to the extent they arise out of any negligent or intentional act or omission of Grantor.

5. Term of Easement. The Easement provided for herein shall be perpetual and run with the land and be binding upon, and inure to the benefit of, the parties and their successors and assigns; *provided, however*, that if Grantee does not construct and begin operation of the conveyor system described herein within twenty (20) years of the date of recording of this Easement, Grantee's rights hereunder shall cease and no longer have any force or effect. And further provided, that in the event Grantee is no longer in need of the overhead conveyor system and it is reasonably likely Grantee will have no such need within the following ten years, Grantee shall dismantle and remove the overhead conveyor system and restore the Easement to its original condition or better, upon the completion of which the Easement provided for herein shall be deemed terminated. Grantee may utilize the Easement for the purpose of dismantling and removing the overhead conveyor system and related reclamation activities.

6. Miscellaneous. The terms of this Easement shall be construed under and governed by the laws of the State of South Dakota without the application of the conflicts of law principles thereof and any applicable federal law. Any lawsuit arising out of related to this Agreement shall be brought in a court of the South Dakota Unified Judicial System.

[SIGNATURES ON FOLLOWING PAGES]

Doc #: 2016-01972  
Page 2 of 6



Dated this 2nd day of May, 2016.

City of Lead, South Dakota

By: Gerald F. Apa  
Gerald F. Apa  
Mayor

ATTEST:

By: Mike Stahl  
Mike Stahl  
City Administrator



On this 2nd day of May, 2016, before me, the undersigned officer, personally appeared GERALD F. APA and MIKE STAHL, known to me to be the Mayor and City Administrator, respectively of the City of Lead, a South Dakota municipal corporation, that is described in and that executed the within instrument, having authority to execute such instrument, and acknowledged to me that such municipal corporation executed the same.

In witness whereof I hereunto set my hand and official seal.



Billie Jo Ryan  
Notary Public

Notary Print Name: Billie Jo Ryan  
My Commission Expires: 7-7-2020

Dated this 3<sup>rd</sup> day of May, 2016.

South Dakota Science and Technology Authority

By: Casey C. Peterson  
Casey C. Peterson  
Its: Chairman of the Board

On this 3<sup>rd</sup> day of May, 2016, before me, the undersigned officer, personally appeared Casey C. Peterson, known to me to be the Chairman of the Board of the South Dakota Science and Technology Authority, a body corporate and politic created under the laws of South Dakota, that is described in and that executed the within instrument, having authority to execute such instrument, and acknowledged to me that such body corporate and politic executed the same.

In witness whereof I hereunto set my hand and official seal.



[Signature]  
Notary Public

My Comm. Expires: 12-11-2020

**EXHIBIT A**  
**SHOWING THE LOCATION OF A 80' WIDE EASEMENT**  
**ACROSS LOT 2A OF TRACT 6**  
**AND A 40' WIDE EASEMENT ACROSS LOT 4 OF TRACT 3**  
**HOMESTAKE ADDITION TO THE CITY OF LEAD,**  
**LAWRENCE COUNTY, SOUTH DAKOTA**



TRACT 2

HOMESTAKE ADDITION

LOT 5 OF  
TRACT 3

WASHINGTON STREET

LOT A

MAIN STREET/US HWY 85

S 38° 59' 43" W 139.98'  
 35.44' 43.80'  
 S 75° 03' 06" E 219.22'  
 N 75° 03' 06" W 226.38'  
 40.0'

EASEMENT STRIP

LOT 4 OF TRACT 3

S 27° 53' 44" W 1.76'  
 R=541.00'  
 A=39.65'

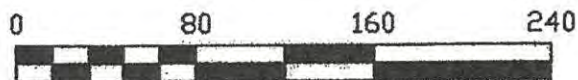
A=81.80'  
 R=520.00'  
 80.0'  
 86.63'  
 E 308.12'

EASEMENT STRIP

N 75° 03' 06" W 61.19'  
 LOT 2A OF TRACT 6  
 87.50'

S 75° 03' 06" E 44.72'  
 N 37° 30' 24" W

TRACT 6

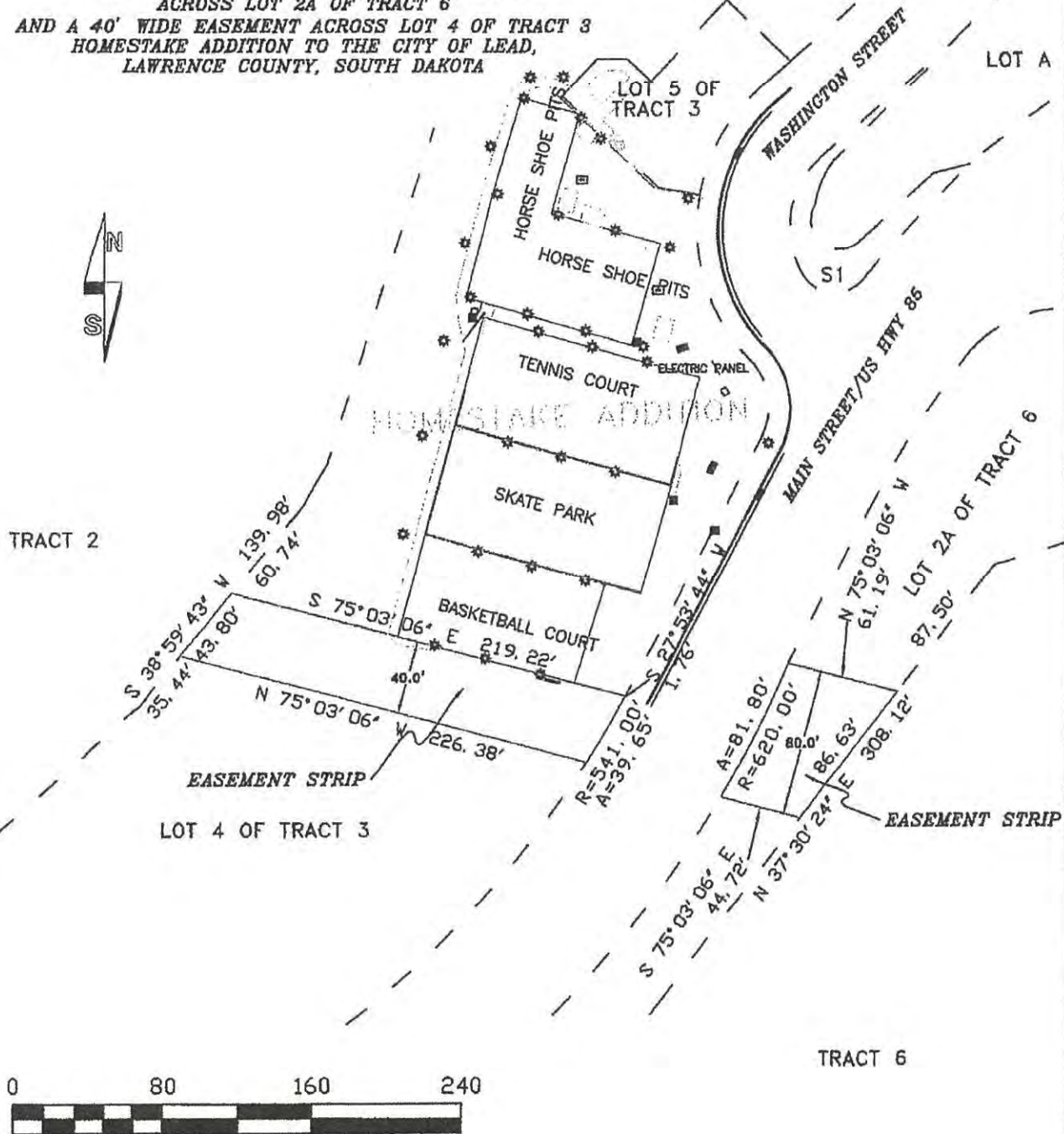


Prepared By:  
**PONDEROSA LAND SURVEYS, L.L.C.**  
 332A WEST MAIN ST.  
 LEAD, SD 57754  
 (605) 722-3840

Date:	3/30/2016
Drawn By:	L. D. Fran
Project No.:	16-85
Dwg. No.:	16-85.dwg

Doc #: 2016-01972  
 Page 5 of 6

**EXHIBIT A**  
**SHOWING THE LOCATION OF A 80' WIDE EASEMENT**  
**ACROSS LOT 2A OF TRACT 6**  
**AND A 40' WIDE EASEMENT ACROSS LOT 4 OF TRACT 3**  
**HOMESTAKE ADDITION TO THE CITY OF LEAD,**  
**LAWRENCE COUNTY, SOUTH DAKOTA**



Prepared By:  
**PONDEROSA LAND SURVEYS, L.L.C.**  
 332A WEST MAIN ST.  
 LEAD, SD 57754  
 (605) 790-9910

Date:	3/30/2016
Drawn By:	L. D. Vren
Project No.:	16-85
Date:	16-85

Doc #: 2016-01972  
 Page 6 of 6

Exhibit C  
to Land Use Agreement

City of Lead Property

Description of the Work

Work will consist of everything necessary to create safe access and to operate and maintain a covered conveyor system to allow transport of excavated rock from the base of the current ore bins inside the "tramway" level, through the length of the tramway and overland toward the open cut. Specific elements of this work may include:

- o Operation and maintenance during the excavation of approximately 875,000 short tons of rock generated by the LBNF project. Access to conveyor system located on SDSTA property may be from Ellison Street, Pine Street, through the tramway via either the Ross or Yates Shafts, and/or SDSTA's road at the Mill Reservoir.
- o If contracted for in the future, work may include removal of the conveyor system.



## **FACILITY AND LAND USE AGREEMENT SDSTA PROPERTY**

This is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the South Dakota Science and Technology Authority, 630 E. Summit Street, Lead, SD 57754 ("SDSTA") and Thyssen Mining Inc., 377 Sunshine Lane, Spring Creek, Nevada 89815 ("TMI").

### **RECITALS**

A. It is anticipated that TMI, pursuant to the terms of the subcontract ("TMI Contract") assigned to Fermi Research Alliance, LLC ("FRA") by Kiewit – Alberici, a Joint Venture pursuant to the Fermilab Subcontract for Long Baseline Neutrino Facility ("LBNF") Far Site Facilities, executed on July 27, 2017 (the "Fermilab Subcontract"), will be tasked with operating and maintaining a temporary rock conveyor system ("TRCS") across and through (including both underground and above ground) property owned by SDSTA and others. The TRCS will be used to move rock excavated from the 4850' level across property owned by SDSTA, Homestake, and others into the "Open Cut" owned by Homestake Mining Company of California, all in connection with the construction of the 'LBNF Far Site Facilities.

B. The TRCS will be a conveyor system with an appropriate safety enclosure for the portion of the conveyor that is above ground.

C. The route of the TRCS across and through SDSTA-owned real estate is shown on Exhibit A, attached hereto and incorporated herein by this reference. Exhibit A also shows the location of access for operation, maintenance and removal of the TRCS across and through SDSTA-owned property. The property subject to the rights granted hereunder and described on the attached Exhibit A is referred to hereinafter as the "SDSTA TRCS Use Area".

D. TMI will require access to, and temporary possession of, the SDSTA TRCS Use Area for the purpose of maintenance, operation and removal of the TRCS.

E. SDSTA desires to grant to TMI and its subcontractors and necessary licensees and invitees (including but not limited to FRA and the United States of America, acting through the Department of Energy) access to, and the right of temporary possession of, the SDSTA TRCS Use Area, and TMI desires to accept said grant of access and right of possession, all according to the terms and conditions set forth herein.

### **AGREEMENT**

For and in consideration of the foregoing Recitals and the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties AGREE as follows:

1. SDSTA hereby grants to TMI and its subcontractors and reasonably necessary licensees and invitees (including but not limited to FRA and the United States of America, acting through the

Department of Energy) a temporary, limited, and revocable right of access and use to enter upon and use the SDSTA TRCS Use Area for the sole and limited purpose of maintaining, operating and removing the TRCS as shown on the attached Exhibit B (the "Work"). Pursuant to the Lease entered into between SDSTA and the U.S. Department of Energy on or about March 29, 2016, ownership of and responsibility for excavated rock deposited into the Open Cut remains with SDSTA, and TMI is not liable for any environmental concerns, safety hazards, or aesthetic concerns arising from the physical composition of the deposited excavated rock. TMI shall deposit excavated rock in accordance with the Letter of Direction issued by SDSTA dated April 3, 2020. Nothing herein shall act to limit TMI's responsibility to transport and deposit the excavated rock in a safe and prudent manner, or to limit TMI's liability for the failure so to do.

2. The foregoing grant is subject to the following terms and conditions:

(a). Any changes to Exhibit A must be approved in writing by SDSTA's Representative prior to commencing any part of the Work or implementation of any change after the commencement of Work. Any material change to Exhibit B must be provided to SDSTA's Representative at least twenty (20) business days prior to implementation;

(b). At least ten (10) business days prior to commencement of the Work, TMI must provide SDSTA's Representative with proof, reasonably acceptable to SDSTA, of the existence of the insurance coverages required under section A, part 5, of the Fermilab Subcontract;

(c). Any health or safety hazards resulting from the Work performed by TMI (including but not limited to trip and fall hazards) must be appropriately mitigated at the end of each day during which the Work is conducted, and may not be left unattended if not mitigated. In the event that TMI discovers health or safety hazards not created by the Work, TMI shall notify SDSTA of the hazard;

(d). Without limiting the generality of any of the foregoing, TMI must comply with SDSTA's environment, safety, and health (ESH) requirements and Storm Water Management Plan;

(e). Any SDSTA employee or representative may require TMI to stop the Work in the event of an actual or perceived health or safety hazard until such time as the hazard is mitigated to the satisfaction of SDSTA's Representative;

(f). The SDSTA TRCS Use Area must be appropriately secured, all construction rubble and waste must be removed therefrom, and it must otherwise be maintained in a manner consistent with the surrounding real estate owned by SDSTA and so as not create an eyesore;

(g). Neither TMI nor any of its contractors, subcontractors, agents, licensees and invitees may authorize or allow any mechanics, materialmen, vendors, or other lien of any kind or nature whatsoever to attach to the real estate subject to this Agreement, nor to any part thereof or interest therein. If any such lien shall attach to said real estate, TMI shall, at its own expense, promptly take all steps necessary to obtain the discharge and release of any such lien. TMI shall indemnify and hold SDSTA harmless from and against any such liens;

(h). TMI and its contractors, subcontractors, agents, licensees and invitees shall comply with SDSTA's Risk Transfer Protocols, a copy of which has been provided to TMI; and

(i) TMI acknowledges and agrees that it is solely responsible for obtaining any necessary governmental permits required for carrying out the Work. SDSTA will cooperate with TMI in obtaining any necessary permits.

3. Anything elsewhere in this Agreement to the contrary notwithstanding, the right of access granted hereunder is revocable by SDSTA upon written notice given no sooner than one hundred eighty (180) days after final completion of the excavation on and under SDSTA's property for LBNF or, if FRA directs TMI to remove the TRCS, upon final completion of the removal, whichever is later. TMI is not expected or required to commence removal work until the change order is executed by FRA. If FRA does not direct TMI to remove the TRCS, then TRCS removal will be addressed under the terms of existing and future agreements between and among FRA, SDSTA, and Homestake concerning its removal. In addition, the right of access granted hereunder is revocable for cause upon ninety days (90) written demand from SDSTA, provided the cause given rise to the notice of revocation remains uncured at the end of said ninety (90) day period. As used in this Agreement, the term "cause" includes, but is not limited to, any violation by TMI of any of the covenants, terms, or conditions of this Agreement.

4. TMI acknowledges and agrees that the Work to be conducted on and around the SDSTA TRCS Use Area are a part of the scope of work under the TMI Contract. TMI further acknowledges and agrees that the obligation to provide certain insurance coverages to SDSTA and others and the obligation to indemnify SDSTA and others, as set out on pages 15-20 and 68- 70 in the Fermilab Subcontract, also apply to the Work to be performed under this Agreement. Upon request by SDSTA, TMI shall provide copies of any insurance policy (including applicable endorsements) required by the terms of this Agreement to SDSTA.

5. TMI will re-convey to SDSTA all rights granted hereunder within one hundred eighty (180) days of final completion of the TMI Contract for LBNF or, if FRA directs TMI to remove the TRCS, upon final completion of the removal, whichever is later. TMI is not expected or required to commence removal work until the change order is executed by FRA. If FRA does not direct TMI to remove the TRCS, then TRCS removal will be addressed under the terms of existing and future agreements between and among FRA, SDSTA, and Homestake concerning its removal. In addition, TMI will re-convey to SDSTA all rights granted hereunder for cause upon ninety days (90) written demand from SDSTA, provided the cause giving rise to the demand remains uncured at the end of said ninety (90) day period. As used in this Agreement, the term "cause" includes, but is not limited to, any material violation by TMI of the covenants, terms, and conditions of this Agreement. In the event FRA terminates the TMI Contract, this Agreement shall terminate. TMI's acknowledgments and agreements relating to indemnification and insurance set out above in section 4, and the provisions of sections 2(g), 7, 9, and 10 of this Agreement shall survive re-conveyance to SDSTA of TMI's rights hereunder and shall also survive termination of this Agreement for any reason.

6. For the purposes of this Agreement, SDSTA's Representative is Tim Baumgartner, (605) 390-5035, [tbaumgartner@sanfordlab.org](mailto:tbaumgartner@sanfordlab.org).

7. The parties acknowledge and agree that there are no covenants between them regarding the fitness or suitability of the real estate subject to this Agreement for the purposes of the Work. The parties further acknowledge that the route for the TRCS has already been chosen, the TRCS is already being installed, and that TMI had no role in the route selection or the installation of the TRCS.

WITHOUT LIMITING THE FOREGOING, SDSTA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES CONCERNING THE SUITABILITY OF THE REAL ESTATE SUBJECT TO THIS AGREEMENT FOR ANY OF TMI'S INTENDED USES OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION, AND TMI'S USE OF SAID REAL ESTATE FOR THE PURPOSES OF THE WORK SHALL BE "AS IS, WHERE IS" WITH ALL FAULTS. Nothing in this section 7 shall act to amend, modify, or waive any express or implied representations or warranties made by FRA under or in connection with the Fermilab Subcontract.

8. Except as otherwise provided in section 1 concerning subcontractors and reasonably necessary licensees and invitees (including but not limited to FRA and the United States of America, acting through the Department of Energy), TMI's rights and obligations hereunder may not be assigned, nor may any rights hereunder be granted to any other party, absent SDSTA's prior written consent. From time to time as SDSTA may reasonably require, TMI shall provide to SDSTA a list of all subcontractors, licensees, and invitees who have been or are projected to be granted access to the SDSTA TRCS Use Area and if requested, a description of the reason for the grant of access.

9. Nothing herein is intended to obligate SDSTA to undertake or pay for any of the Work or for SDSTA to undertake or pay the cost of compliance by TMI with the terms and conditions of this Agreement.

10. The terms of this Agreement shall be construed under and governed by the laws of the State of South Dakota, without respect to the conflicts of law principles thereof. The parties were both represented by legal counsel in connection with the drafting of this Agreement and have engaged in negotiations concerning the terms and provisions hereof. Accordingly, the parties do not intend that the rule relating to the interpretation of contracts against the drafter be applied to this Agreement or any provision hereof or to any other agreement or instrument executed in connection herewith, and hereby waive the application of any such rule. This Agreement may only be amended by a written document, executed with the same formalities as this Agreement. Any lawsuit arising out of or related to this Agreement must be brought in a court of the Unified Judicial System of the State of South Dakota.

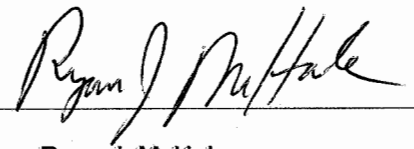
SOUTH DAKOTA SCIENCE AND  
TECHNOLOGY AUTHORITY

BY:

ITS:

DATE:

THYSSEN MINING INC.



BY: Ryan J. McHale

ITS: Chief Operating Officer

DATE: Nov 5, 2020

State of South Dakota )  
 )ss  
County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2020, before me the undersigned officer,  
personally appeared Casey Peterson, who acknowledged himself/herself to be the  
Chairperson of South Dakota Science and Technology Authority, a public entity, and that he/s he as  
such Chairperson, being authorized so to do, executed the foregoing name of the public entity  
by himself/herself as Chairperson

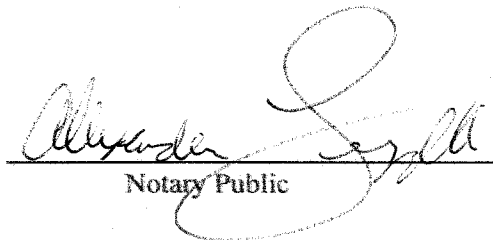
IN WITNESS WHEREOF I hereunto set my hand and official seal this \_\_\_\_ day of  
\_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Print Name:  
My Commission Expires:

State of Nevada )  
 )ss  
County of Nye )

On this the 5th day of November, 2020, before me the undersigned officer,  
personally appeared RYAN MCHALE, who acknowledged himself/herself to be the  
Chief Operating Officer (COO) of TMI, and that he/she as such COO, being authorized so  
to do, executed the foregoing name of the public entity by himself/herself as COO

IN WITNESS WHEREOF I hereunto set my hand and official seal this 5th day of  
November, 2020.

  
\_\_\_\_\_  
Notary Public

(SEAL)

Notary Print Name: Alexander Frizzelle  
My Commission Expires: 2-17-2024

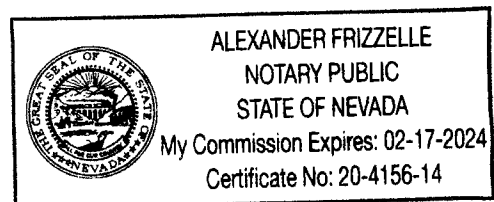


Exhibit A to  
Facility and Land Use Agreement - SDSTA Property





Exhibit B to  
Facility and Land Use Agreement -  
SDSTA Property

Description of "The Work"

Work will consist of everything necessary to create safe access and to operate and maintain a covered conveyor system to allow transport of excavated rock from the base of the current ore bins inside the "tramway" level, through the length of the tramway and overland toward the open cut. Specific elements of this work may include:

- o Operation and maintenance during the excavation of approximately 875,000 short tons of rock generated by the LBNF project. Access to conveyor system located on SDSTA property may be from Ellison Street, Pine Street, through the tramway via either the Ross or Yates Shafts, and/or SDSTA's road at the Mill Reservoir.
- o If contracted for in the future, work may include removal of the conveyor system.